

H.R. 3824—TO AMEND THE CLAYTON ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON GENERAL OVERSIGHT
AND THE ECONOMY
OF THE
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
NINETY-NINTH CONGRESS
SECOND SESSION

WASHINGTON, DC, APRIL 17, 1986

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H.R. 3824—TO AMEND THE CLAYTON ACT

THURSDAY, APRIL 17, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL OVERSIGHT
AND THE ECONOMY,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m. in room 2359-A, Rayburn House Office Building, Hon. Nicholas Mavroules (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MAVROULES

Mr. MAVROULES. The hearing will now be opened. We have called this hearing to discuss a bill introduced by my colleague, Congressman Berkley Bedell, that would establish a nationwide gasoline divorcement law.

We are also very interested in the views of our witnesses on a number of current trends in the gasoline marketplace. These include the mergers between several large oil companies, the recent market pullouts by some companies, and the dramatic drop in the price of gasoline.

Our primary concern here is to understand how these current trends may be affecting the ability of the small, independent dealer to effectively compete in the gasoline market.

In my own State of Massachusetts, dealers are coping with the pullout of Arco from the east coast and the sale of its east coast operations to Shell Oil Co. As a matter of fact, a good friend and longtime dealer in my district has discussed with me the effect that this is having on service station dealers in the Bay State. He will be testifying later on. His name is Matt Gaeta.

Our purpose today is to review the facts and decide if any structural reforms in the current system are needed. Ultimately, we want to ensure that fair competition among equals prevails in the gasoline marketplace.

Finally, let me say that I strongly believe, and I'm sure all of you will agree, that it is in the best interests of the United States to have an active and strong small business sector. I would like to yield at this time to my colleague and the ranking minority member, Mr. Conte, if he has any opening words.

[The bill H.R. 3824, follows:]

99TH CONGRESS
1ST SESSION

H. R. 3824

To amend the Clayton Act to preserve and promote wholesale and retail competition in the retail gasoline market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 1985

Mr. BEDELL introduced the following bill; which was referred jointly to the Committees on the Judiciary and Small Business

A BILL

To amend the Clayton Act to preserve and promote wholesale and retail competition in the retail gasoline market, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Motor Fuel Sales Compe-
5 tition Improvement Act of 1985".

6 **SEC. 2. AMENDMENT TO CLAYTON ACT REGARDING DISTRIBU-**
7 **TION OF GASOLINE.**

8 The Clayton Act (15 U.S.C. 12 et seq.) is amended by
9 inserting after section 3 the following new section:

1 “SEC. 3A. (a) Except as otherwise provided in this sec-
2 tion, it shall be unlawful for any producer or refiner, directly
3 or indirectly, to require any retail motor fuel dealer to pur-
4 chase more than 70 percent of the monthly retail sales of
5 motor fuel from such producer or refiner or to prohibit the
6 use or conversion of storage tanks and dispensers as provided
7 in subsection (c).

8 “(b) It shall be unlawful for any producer or refiner to
9 contract, combine, or conspire with any producer or refiner
10 for the purpose of violating subsection (a).

11 “(c) It shall be unlawful for any retail motor fuel dealer,
12 at a motor fuel service station displaying a trademark, trade
13 name, or other identifying symbol or name owned by a pro-
14 ducer or refiner, to sell motor fuel which is not provided by or
15 for such producer or refiner without providing reasonable
16 notice at the point of sale that motor fuel dispensed by one or
17 more dispensers is not refined by or for such producer or
18 refiner, except that a retail motor fuel dealer may convert
19 one or more existing storage tanks and dispensers or estab-
20 lish new storage tanks and dispensers for sale of motor fuel
21 supplied by any person other than the owner of the trade-
22 mark, trade name, or identifying symbol displayed at the sta-
23 tion.

1 “(d)(1) Except as provided in paragraph (2), it shall be
2 unlawful for any large integrated refiner to operate any
3 motor fuel service station in the United States.

4 “(2) It shall not be a violation of paragraph (1) for a
5 large integrated refiner to own all or part of the assets of a
6 motor fuel service station if such producer does not engage in
7 the business of selling motor fuel at such station through
8 any—

9 “(A) employee;

10 “(B) commissioned agent;

11 “(C) person acting on behalf of the refiner or
12 under the refiner's supervision; or

13 “(D) person operating such station pursuant to a
14 contract with the refiner which provides that the refin-
15 er has substantial or effective control over the motor
16 fuel operations of such station.

17 “(e) For purposes of this section—

18 “(1) the term ‘bank for cooperatives’ means a
19 bank established under section 3 of the Farm Credit
20 Act of 1971;

21 “(2)(A) except as provided in subparagraph (B),
22 the term ‘dealer’ means a person who occupies as a re-
23 tailer a motor fuel service station; and

24 “(B) for purposes of subsection (c), the term
25 ‘dealer’ means, with respect to a refiner, a person de-

1 scribed in subparagraph (A) who occupies a motor fuel
2 service station under lease or rental agreement with a
3 refiner;

4 “(3) the term ‘large integrated refiner’ means any
5 person who in the calendar year preceding the date on
6 which the violation of this section is alleged to have
7 occurred—

8 “(A) produced, directly or indirectly, more
9 than 30 percent of the domestic and imported
10 crude oil supplied to its refinery; and

11 “(B) had a total refinery capacity for the dis-
12 tillation of crude oil in excess of 50,000 barrels
13 per day;

14 “(4) the term ‘motor fuel’ means gasoline, diesel
15 fuel, alcohol, or any mixture of them sold for use in
16 automobiles and related vehicles;

17 “(5)(A) except as provided in subparagraph (B),
18 the term ‘motor fuel service station’ means any facility
19 at which motor fuel is sold at retail; and

20 “(B) for purposes of subsection (d), the term
21 ‘motor fuel service station’ does not include any facili-
22 ty—

23 “(i) owned and operated by a cooperative as-
24 sociation that is certified by a bank for coopera-
25 tives to be eligible to borrow money from such

1 bank under title III of the Farm Credit Act of
2 1971; and

3 “(ii) located on premises owned and operated
4 by such cooperative association, at which such co-
5 operative association carries on, as a bona fide
6 part of its business, the sale or furnishing of farm
7 or aquatic supplies, farm or aquatic business serv-
8 ices, or the bulk distribution of motor vehicle fuel
9 to farmers on farms;

10 “(6) the term ‘producer’ means any person who is
11 engaged, directly or indirectly, in the production of
12 crude oil;

13 “(7) the term ‘refiner’ means any person engaged,
14 directly or indirectly, in the refining of motor fuel or
15 any producer who contracts with another to refine pe-
16 troleum products for purposes of sale of motor fuel by
17 the producer; and

18 “(8) the term ‘United States’ means the several
19 States, the District of Columbia, and any territory or
20 possession of the United States.”.

21 SEC. 3. FINANCIAL ASSISTANCE TO SMALL BUSINESS CON-
22 CERNS ACQUIRING MOTOR FUEL SERVICE STA-
23 TIONS.

24 (a) Section 3 of the Small Business Act (5 U.S.C. 632)
25 is amended—

1 (1) by redesignating subsection (j), as added by
2 the Small Business Computer Security and Education
3 Act of 1984, as subsection (k); and

4 (2) by adding at the end thereof the following new
5 subsection:

6 “(l) For purposes of section 7(a)(16) of this Act—

7 “(1) the terms ‘motor fuel service station’ and
8 ‘dealer’ have the meanings set forth in paragraphs (5)
9 and (2), respectively, of section 3A of the Clayton
10 Act.”.

11 (b) Section 7(a) of the Small Business Act (15 U.S.C.
12 636(a)) is amended by adding at the end thereof the following
13 new paragraph:

14 “(16) Notwithstanding any other provision of this
15 subsection, the Administration may participate on a de-
16 ferred basis in any loan under this subsection to any
17 dealer acquiring a motor fuel service station.”.

18 **SEC. 4. EFFECTIVE DATE.**

19 This Act and the amendments made by this Act shall
20 take effect one year after the date of the enactment of this
21 Act.

○

OPENING STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. CONTE. Well, Mr. Chairman, in my role as ranking Republican I want to thank you for holding these timely hearings. Consumers all over America are rejoicing over lower oil prices and gasoline prices. For years we have become used to high gasoline prices. No one ever thought we would be paying under \$1 a gallon for gasoline again, but here we are. There is a lot going on in this industry.

Some people in the Congress are talking about oil import fees, which I strongly oppose, as a means of reducing the deficit. They say with oil prices dropping we should have an oil import fee. I disagree. I have authorized a resolution to that effect.

In February of this year I testified before the Senate Finance Committee in opposition to oil import fees and I said then that falling oil prices are a tremendous benefit to the American consumer. With some evidence indicating that retail divorcement legislation tends to increase oil prices, and this includes a respected study by one of today's witnesses, we should take a hard look at the bill, but this is a bill that I am very, very familiar with and as I look out in the audience here I see some old friends. I know how these people have been trampled on down through the years.

Congressman Dingell sat where you are sitting today many years ago Mr. chairman and I sat here. I haven't moved very far as you can see. He is now chairman of the big committee, and we had hearings. Little gas dealers throughout this country were being bludgeoned by the big oil companies, forcing them to sell their commodity, their batteries, and other things.

Then we went into the hearings and they—this was the coupon days where they had bonuses, lotteries. I think that's where all the lotteries started in the country—in the gasoline business. We found some real abuses in that particular area, so it's an old issue, and I'm looking forward to hearing some of the witnesses here today. I think they will really jog my memory.

Thank you, Mr. Chairman.

Mr. MAVROULES. Thank you, Silvio, very much, and Berkley, I'm sure you have an opening statement. This is your bill that will be heard this morning.

OPENING STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BEDELL. Thank you, Mr. Chairman. I would like to thank you for holding this hearing on H.R. 3824, retail gasoline marketing.

The survival of independent business competition in the petroleum marketing industry has been a concern of this, the Small Business Committee, ever since its first investigation of the subject in 1943. One of the results of our work was passage of the Petroleum Marketing Practices Act of 1978 which was intended to promote healthy and vigorous competition in the petroleum marketing industry.

Almost every year since 1979 the committee has held hearings on the subject and has found that the problems are getting worse.

Essentially the problem is that big oil companies are both tenants and landlords of the independent dealer against whom they are increasingly competing in the retail market. True competition under these circumstances is, of course, impossible because one party effectively controls the actions of the other.

Two general solutions have been proposed—amendments to toughen the PMPA and divorcement legislation to prohibit refiners from operating retail gas stations. Previous divorcement legislation had up to 85 cosponsors. The full Small Business Committee reported divorcement legislation in the 96th Congress, and the full Senate Judiciary Committee reported similar legislation in the 97th Congress.

The purpose of the 1978 Petroleum Marketing Practices Act was to enhance fair and open competition by preventing franchisors from arbitrarily terminating the franchise relationship with their franchisees. Unfortunately, some narrow judicial interpretations and some abusive and predatory marketing practices by some refiners have severely limited the ability of the Nation's independent dealers to compete. Some major refiners will be quick to assert that declining petroleum prices have increased competition in the marketplace and that inefficient marketers and dealers are simply seeking protection from the vagaries of the marketplace.

Nothing could be further from the truth. Declining oil prices have increased competition in the market. This has increased the predatory and abusive marketing practices of some refiners who attempt to increase their market share at the expense of the independent. The result is a continuing sharp decline in the number of independent marketers.

I have yet to meet any independent dealer who is not willing to compete head to head in the marketplace provided the rules are fair for both sides. The legislation I have introduced is intended to eliminate some of the more flagrant marketing abuses without involving the Government in more regulation or protecting anyone from the pressures of competition.

As introduced, H.R. 3824 contains three basic provisions. First, the divorcement provision would prohibit major refiners from directly operating retail gasoline outlets either with their own employees or with contract management.

They would still be permitted to own gas stations but these would have to be leased out to independent businesses.

Second, the open supply provision would assure dealers of the right to shop for competitively priced supplies of gasoline at the wholesale level. So-called branded dealers would have to provide point of purchase notice to customers if the product being sold is obtained from anyone else other than the branded supplier.

Third, SBA loans or guarantees would be made available to service station dealers who have the opportunity to purchase stations they currently lease from refiners.

Although it is unlikely at this late date in the 99th Congress that divorcement will become law, my hope is that today's hearing will focus our attention on the problems and on the need for legislative solutions.

In this regard I would like to mention another piece of legislation which attempts to address the problem. H.R. 2406 introduced

by Congressmen Synar and Tauke would amend the PMPA to hold refiners to standards of accountability in their contract negotiations with their dealers.

I strongly support passage of this legislation which resembles legislation I have introduced in previous Congresses, and believe that this would at the very least, help address the problem. I certainly appreciate your holding these hearings, Mr. Chairman.

Mr. MAVROULES. Thank you, Berkley.

Before I call panel 1, Mr. Olin, do you have an opening statement?

Mr. OLIN. Mr. Chairman, only to say that I am very, very happy that you are holding this hearing. I would like all other purchases of gasoline—you have lots of choices to make, and we have, there is quite a bit of competition in the field. I am quite interested in studying the testimony.

I may not be able to stay for too much of the hearing, but the gasoline retail dealers in my area are quite interested in this bill. Something certainly should come up and get serious consideration by the subcommittee.

Mr. MAVROULES. Thank you very much. We are going to have four panels this morning, and I'm going to ask all who will be testifying to please try to keep your opening statement to 5 minutes and no more. We will include all of the statements in the record.

The reasons for this, of course, are to expedite, No. 1; No. 2, to give us an opportunity to ask some questions so we can get to the heart of the problem; and No. 3, so we may be able to adjourn by 12:30 because of other commitments on members of the panel and in the House today.

Now for the first panel, I would ask Leonard Coburn, Director, Office of Competition, Department of Energy, and also Winston S. Moore, Assistant Director for Planning, Bureau of Competition, Federal Trade Commission—gentlemen, welcome, and Mr. Coburn, if you would proceed with your testimony?

TESTIMONY OF LEONARD L. COBURN, DIRECTOR, DIVISION OF COMPETITION, DEPARTMENT OF ENERGY

Mr. COBURN. Mr. Chairman, members of the subcommittee, I am Leonard L. Coburn. I am Director of the Division of Competition of the Department of Energy. I appreciate the opportunity to appear before you this morning to present the views of the Department of Energy on H.R. 3824.

Since my full statement will be printed in the record, I will summarize my statement, my testimony, for you this morning.

The Department of Energy strongly opposes this bill. We strongly oppose both the divorcement and the open supply provisions. Let me briefly indicate some of the reasons for this position.

Divorcement is advanced by proponents as a solution to the dwindling number of lessee dealers and to the competition between dealers and company owned and operated service stations. Divorcement will not solve either of these problems.

There are many ways to sell gasoline. A refiner can use its own employees and operate through its own stations. This is the company owned and operated or company store approach.

The refiner can use the dealer, either lessee or open dealers. With the lessee dealer option, the refiner owns the location and leases the location to the dealer. With the open dealer, someone else owns the location and the refiner leases the facility to operate the station. The open dealer taken together with the lessee dealer and company store alternatives are called direct supply.

Another way to operate is through wholesalers or jobbers. Here the refiner sells at the rack and the jobber delivers the product to the station, either to its own company stores or to its own dealers. This is the indirect supply option.

For the most part, major refiners use the direct network, the combination of dealers and company stores. Jobbers also rely on dealers more than any other way to sell their gasoline. So it is clear that dealers are the most important element in selling gasoline.

Refiners use all these various ways to sell gasoline. Each way makes rational economic sense, depending on the location and the goal of the refiner. In some areas, high volume may be the most important factor in providing the lowest prices to consumers while maximizing profits. The company store may achieve this goal better than any other way to sell gasoline.

In other areas, a mix of volume and service may produce the lowest prices to consumers while being the most profitable. The dealer may be the best way to achieve this goal. While in other situations it may make no sense whatsoever for the refiner to supply the market directly. The refiner may rely on jobbers who have lower overhead and know the local market.

The refiner with all these options utilizes them to provide consumers with the lowest prices consistent with the service options available to maximize its profits and to provide the best marketing coverage.

Once an artificial limitation is imposed on the refiner such as divorcement or open supply, the economics of marketing change. No longer does the refiner have a full array of alternatives available to him. The limitations on marketing approaches may make direct distribution less profitable, resulting in higher consumer prices, and create incentives to shift to other marketing styles.

From a purely rational economic point of view, both divorcement and open supply create disincentives to use dealers and create incentives to shift to less costly alternatives.

As a solution to the dwindling population of dealers, the combination of divorcement and open supply creates very strong incentives not to use dealers at all or in very limited situations. Ultimately, the incentives created could lead to a more rapid decline in the dealer population as refiners switch to jobbers or to some other form of rack selling. Or, forced to use the less efficient dealer system, prices may go up as well.

Divorcement is a remedy in search of a problem. The idea that refiners deliberately would try to put their dealers out of business through some form of anticompetitive conduct is unproved and ludicrous. We have been hearing allegations of subsidization and predatory pricing for years with no verifiable proof. We have been hearing allegations of below cost selling for years with dealer groups showing us pictures of prices at company stores and com-

paring them with dealer invoice prices to, quote, unquote, prove that company stores are using below cost selling tactics. None of this evidence takes into account the various legitimate marketing devices used by all retailers to sell their product, such as volume rebates, rent rebates, temporary voluntary allowances, pooled margins, et cetera.

Many states have below cost selling laws. If this evidence is so conclusive, why don't we see more State enforcement of these below cost selling laws? I submit to you that the pricing we see in the marketplace is healthy competition and not any nefarious attempt by the company stores to drive out dealers.

One last thought on the company store dealer competition. Most major refiners use the direct marketing system as their primary selling system. Why would a refiner intentionally want to injure one arm of that distribution system?

The Department of Energy's latest study on gasoline marketing indicates that the volumes through the direct distribution system move together. If you hurt one arm, then you hurt the other arm.

A concluding comment on open supply. Prohibiting a refiner from entering into an exclusive contract to supply its dealers undermines the value of that dealer to the refiner. Why should a refiner pay for the location and all the station's facilities if the dealer does not have to sell the refiner's gasoline? It may make little or no economic sense for the refiner to make a large up-front investment in the station knowing full well that the refiner will not get a full return on its money because only 70 percent of the supply through the station is its own.

A refiner could decide that unless he can assure a secure outlet for his gasoline, the refiner will abandon dealers altogether and find some other way to sell his gasoline.

Because divorcement and open supply interfere with the competitive process, create inefficiencies in the distribution system, and lead to higher prices for consumers, the Department of Energy opposes this bill.

I will be pleased to answer any questions you may have. Thank you.

[Mr. Coburn's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF LEONARD L. COBURN, DIRECTOR, DIVISION OF COMPETITION,
DEPARTMENT OF ENERGY

Mr. Chairman, Members of the Subcommittee:

I am Leonard L. Coburn, Director, Division of Competition. I appreciate the opportunity to appear before you today to present the views of the Department of Energy on H.R. 3824, the Motor Fuel Sales Competition Improvement Act of 1985. The Department strongly opposes H.R. 3824.

In this testimony, I will briefly summarize H.R. 3824. I will briefly indicate the major policy studies issued by the Department elaborating on the gasoline marketing industry in general and on the specific issues presented by this bill. Then I will discuss at some length the reasons for the Department's opposition to this bill. Finally, I will address some of the current trends in the retail gasoline marketplace, such as the recent mergers between major oil companies, the market pullouts by some oil companies, the price of gasoline in the current market, and the role of the small independent dealer in the gasoline marketplace.

Description of H.R. 3824

H.R. 3824 amends the Clayton Act, one of the antitrust laws. In section 2 of H.R. 3824, there would be a new section 3A of the Clayton Act with two major provisions dealing with open supply and divorcement. Sections 3A(a)-(c) address open supply. Section 3A(a) prohibits any producer or refiner from contracting with its dealer for more than 70 percent of the dealer's monthly retail gasoline sales. In other words, the supplier can require its dealer to buy only 70 percent of the station's monthly sales. The dealer is given the discretion to buy the remaining 30 percent from its supplier or from anyone else. Thus, 100 percent

exclusive dealing contracts are prohibited. Moreover, the supplier cannot prohibit its dealer from using or converting the tanks and pumps for storing and selling this other gasoline.

As a quid pro quo, section 3A(c) requires that the dealer must post a notice to its customers that it is selling gasoline other than the posted brand name through the tanks and pumps of the brand name supplier.

Section 3A(d) addresses divorcement. Section 3A(d) prohibits a large integrated refiner from operating a service station using its own employees, or using commission agents, or using persons acting on behalf of or under the supervision of the refiner, or using contractors.

While the large integrated refiner can own the location, it is limited in how it can operate the station to dealers, wholesalers, or some other method not prohibited by the bill.

Large integrated refiners are defined in section 3A(e)(3) to include any person who produced more than 30 percent of its refinery's supply and its total refinery capacity was more than 50,000 barrels per day. This includes every major brand name refiner and a number of larger independent companies.

The last principal substantive provision is section 3 of H.R. 3824 amending the Small Business Act permitting loans to dealers acquiring service stations. This provision facilitates implementation of the divorcement provision if large integrated refiners decide to sell their locations.

Department of Energy Studies

The Department of Energy has a long history of analyzing the gasoline marketing industry. During the regulatory era, the Department analyzed the impact of regulation on the industry. In January 1981, the

Department provided the Congress with a statutorily required analysis of gasoline marketing that focused primarily on the question of whether company-owned and -operated service stations operated in a predatory (that is, below cost) manner. This broad study, titled The State of Competition in Gasoline Marketing, concluded that the company-owned and -operated stations generally were not operated in a predatory, anticompetitive manner. Rather, these company-owned and -operated stations were being operated in a profit maximizing manner. Moreover, the study found that government regulation of the marketplace was the most anticompetitive factor operating in the gasoline market at that time and the driving force behind many of the trends and changes occurring in gasoline marketing.

After the elimination of regulation of crude oil and refined products in January 1981, the Department continued its assessment of the gasoline marketing industry. In March 1984, the Department published Deregulated Gasoline Marketing, in draft form. While a final version of this study was not prepared, most of its findings remain valid. Its major tentative conclusion is also the Department's current view:

The major tentative conclusion of this study is that the vigorous competition occurring in the marketplace since decontrol is caused by underlying structural changes in costs, consumer demand, and consumer preferences. The market changes are not the result of anticompetitive activity, but the result of the competitive process itself forcing adaptation to these underlying structural changes. The many legislative proposals now circulating at both the federal and state level are unwarranted efforts to block or undo the effects of these market forces. At best they are useless. At worst they are expensive counterproductive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help, while they harm the competitive process, competitors, and consumers.

Deregulated Gasoline Marketing addressed divorcement at pages 97-105 and open supply at pages 118-120.

The Department continues its analysis of gasoline marketing issues with articles appearing from time to time in the Petroleum Marketing Monthly and through continuous monitoring of market developments.

Reasons for Opposition to H.R. 3824

The Department consistently opposed divorcement at the federal and state levels. The Department is now firmly opposed to the legislated open supply provisions of H.R. 3824.

Divorcement

The ostensible purpose of service station divorcement legislation is to prevent refiners from anticompetitive activity in their competition with other segments of the gasoline marketing industry and especially with their own dealers. It is alleged that refiners subsidize their company-owned and -operated service stations to the detriment of their dealers. This implies that the refiners are operating these owned and operated stations at a loss in order to drive their dealers out of business with the expectation of earning above normal profits in the future. This form of predatory conduct by a refiner against one segment of its marketing system would be self-defeating. Why would a refiner intentionally injure one segment of its marketing organization? We would not expect a rational company to lose money through one distribution arm in the hope it will build up its other arm to compensate for the loss.

Moreover, other marketers stand ready to enter the industry if there is any perception that above normal profits can be earned. Since gasoline marketing is one of the easiest industries to enter, entry, in fact,

takes place to such an extent that major refiners continue to lose market share to independent marketers. Even if a major integrated refiner thought a successful predatory campaign might eliminate its dealers, the refiner could never earn back all of its losses through above-normal prices because of this easy entry. Thus, a predatory campaign would not be successful. No evidence has been found by the Department of Energy to indicate the existence of predation. No evidence has been provided to substantiate the allegation of predatory conduct.

In view of the dearth of evidence to support the allegation of subsidization, the real purpose of service station divorcement is to protect one segment of the gasoline marketing industry--dealers--from the competitive process. The Department has examined this issue carefully and concluded that this legislation is detrimental to consumers and the competitive process.

The Department's most recent examination of gasoline marketing data from those states where divorcement was enacted indicates that divorcement tends to decrease the level of competition by increasing the level of concentration. (See Deregulated Gasoline Marketing, pp. 88-93.) The same data indicate that divorcement may not be effective in increasing the volumes of the dealers. (Ibid., pp. 83-88.) We conclude from these data that divorcement does not contribute to the fortunes of the dealers, which are expected to be the prime beneficiaries, but rather contributes to the denigration of the competitive process.

Most importantly, the data indicate that the fortunes of the dealers and the company-owned and -operated stations are intertwined. (Ibid., pp. 72-81, 83-88.) Refiners distribute gasoline through a direct network

comprised of company-owned and -operated stations and dealer-operated stations. They also distribute through an indirect network comprised of jobbers and wholesalers. We found that major shifts took place in gasoline volumes between the two networks. When the direct network does well, all segments within the direct network do well. If the direct network is increasing its volume relative to jobbers, the volume of both company-owned and -operated stations and dealer-operated stations increases. This results from the effect that advertising and promotion have on the fortunes of all parts of the direct network. If jobbers are increasing their volumes, then both dealers and company-owned and -operated stations tend to lose volume relative to jobbers. This implies that actions adversely affecting the direct network will affect all segments of the direct network adversely. If divorcement were enacted and company-owned and -operated stations forbidden, dealers would suffer from the denigration of the value of the direct network to the refiners.

Consumers ultimately pay the price for the decrease in competition caused by divorcement. Various studies demonstrated that prices of gasoline increase after divorcement. For example, in Maryland, the first state to enact divorcement legislation, the price of gasoline increased 2 to 6 cents per gallon, depending on the grade of gasoline, shortly after divorcement became effective. (Ibid., pp. 97-105.)

Although dealers assert that they are better off after divorcement, it is clear that consumers and the competitive process are harmed. As a result, the Department continues to oppose enactment of service station divorcement legislation.

Open Supply

In Deregulated Gasoline Marketing at pages 118-120, we discuss the benefits and costs of open supply. The primary benefit--increased sources of supply at potentially lower prices--is weighed against its costs--loss of value of the refiner-lessee dealer relationship and loss of quality control. The Department now concludes that the costs of legislated open supply outweigh any of its benefits. As a result, we oppose the open supply provision of H.R. 3824.

The fundamental problem with the legislated open supply provision of H.R. 3824 is its prohibition against a refiner requiring an exclusive or 100 percent requirements contract. From a marketing viewpoint, a refiner may find that a full requirements contract system by its dealers yields the lowest distribution costs. By prohibiting this form of distribution, a refiner may be forced to utilize a more costly distribution system resulting in higher prices for consumers. If a partial requirements contract system is more costly than utilizing wholesalers, then the refiner may switch to wholesalers abandoning its dealer network altogether.

This result means fewer lessee dealers, not more lessee dealers and certainly not an increase in the number of more price-competitive lessee dealers.

It is important to understand this point because it is crucial to our view that legislated open supply may lead to the demise of the branded dealer network rather than increasing the flexibility and competitiveness of dealers. The primary reason for this view is that legislated open supply undermines the supplier-dealer contractual relationship.

The relationship between branded dealers and their suppliers is based upon a contract. The goals of both the branded dealer and the supplier are similar; each wants to promote brand loyalty and consumer confidence in its product. The supplier-dealer relationship is entered into or continued only when both parties believe that this relationship, as opposed to some other method of distribution, yields the maximum joint long-range profits. Interference with this contractual relationship may have the unintended effect of making the relationship no longer profitable for one or both parties. Suppliers have an interest in obtaining a reasonable yield on their investment, while dealers want to achieve the highest profits possible while building loyalty among their clientele.

The principal reason that the open supply provision may lead to the demise of the branded dealer network is that the mutual benefits derived from the supplier-dealer relationship may be abrogated. The mutuality of this arrangement--the dealer getting a station with minimum up-front capital and the refiner having an assured outlet for its product--is vitiated with a legislated open supply provision. It may become less profitable for the refiner to put the dealer into the location on the same terms as in the past, that is, up-front capital, rental payments, etc. For example, more up-front capital may be required from the dealer, deterring the ability of the small businessman or businesswoman from entering the business in the first place. Similarly, the dealer could not expect to pay the same rent in a situation where the supplier's facilities are used to sell another supplier's product. Rents would have to increase.

H.R. 3824 attempts to give the lessee-dealer the benefit of having a refiner finance its operations without permitting the dealer to be bound exclusively to the refiner if it is in the best interests of the refiner to have a 100 percent requirements contract. In short, the result H.R. 3824 wants to achieve is for major refiners to finance their dealers so that the dealers can operate similarly to the independent marketers who finance their own operations. This best-of-both-worlds situation is likely to reduce major refiners' incentive to sell through branded dealers.

In sum, we find few, if any, benefits to consumers and competition from divorcement and legislated open supply. The two in tandem probably will harm dealers more than they will benefit from the provisions. We remain firmly opposed to both provisions.

Current Trends in the Retail Gasoline Market

Your letter inviting the Department to testify requested information concerning current trends in the retail gasoline marketplace, such as the recent mergers between major oil companies, the market pullouts by some oil companies, the price of gasoline in the current market, and the role of the small independent dealer in the gasoline marketplace. I will address each of these issues briefly.

Mergers

A number of mergers and acquisitions occurred within the past five years, some with implications for the gasoline marketing industry. I attach to this testimony a list of the principal acquisitions that took place between 1981 and 1985. Most acquisitions had little affect upon gasoline marketing. Some acquisitions were affected by actions of the Federal Trade Commission (FTC). For example, in the acquisition of Gulf by

Chevron, the FTC required that Chevron divest Gulf's southeast marketing assets. These assets were bought by The Standard Oil Company. Similarly in the Texaco acquisition of Getty, the FTC required the divestiture of Getty's northeast marketing assets. Powertest eventually bought these assets.

Some marketing actions were undertaken voluntarily. For example, after Occidental's purchase of Cities Service, Occidental sold Cities Services' refinery and marketing assets to Southland, the owner and operator of the 7-Eleven stores--the largest convenience store chain.

Generally, it appears that the recent acquisitions were consummated in such a way as to assure and foster continued competitive vigor in the gasoline marketing industry.

Market Pullouts

Market pullouts or withdrawals are a continuing phenomenon in the industry. Deregulated Gasoline Marketing at pages 26-31 discusses what happened immediately after decontrol in January 1981, documenting a number of withdrawals due to small market shares, low-volume stations, indirect or costly supply, or some combination of these factors.

Since the publication of Deregulated Gasoline Marketing, pullouts continued, some on a more grand scale. For example, Atlantic Richfield withdrew from all marketing east of the Mississippi. Chevron pulled out of the northeast. In each instance, while there may be some uncertainty and confusion, other marketers moved in to provide supply and maintain the distribution network, such as Atlantic Refining replacing ARCO and Cumberland Farms replacing Chevron.

Pullouts reflect the dynamic nature of the gasoline industry. Pullouts reflect healthy competition. Where this activity does not take place, it usually reflects a lack of competition rather than its presence.

Gasoline Prices

The dramatic decrease in crude oil prices in the past several months is reflected in the sharp drop in gasoline prices. Since Christmas time, the average price for a gallon of gasoline dropped 23.6 cents to \$1.02 according to the American Automobile Association. Self-serve prices are even lower, averaging 94.8 cents for unleaded gasoline or 26.2 cents less than Christmas. The benefit to the consumer and the economy is reflected in the decrease in the February CPI of 0.4 percent--the first decrease since December 1982 and the largest monthly decrease in more than 30 years.

Dealer Role

The role of the small independent dealer remains important. In 1984, dealers and wholesalers together accounted for about 81 percent of U.S. motor gasoline sales (EIA-782A). This national average varies according to region. At the Petroleum Administration for Defense (PAD) District level, the dealer-wholesaler share of motor gasoline sales in 1984 was:

PADD I	83 percent
PADD II	75 percent
PADD III	81 percent
PADD IV	85 percent
PADD V	86 percent

At the state level there is even more variation with the highest at 96.1 percent and the lowest at 47.1 percent.

Using other EIA data collected for 25 major energy producers (EIA-28) for 1984, there is a better breakdown among types of marketers. The direct distribution network accounts for 46.8 percent of gasoline sales by volume while the indirect or wholesale network accounts for 47.4 percent. (Table 28, "Performance Profiles of Major Energy Producers 1984," attached.) Within the direct network, on a volume basis, dealers accounted for 72 percent of sales, by far the most important segment of the directly distributed volume.

Looking at the data from a dollar value perspective, dealers still are relatively important. For all Financial Reporting System (FRS) companies, dealers accounted for 34 percent of the value shipped, with wholesalers accounting for 46 percent. (Table G53, "Performance Profiles of Major Energy Producers 1984," attached.) But among the top four companies, dealers accounted for about the same share in value shipped at 41.1 percent compared to 41.7 percent for wholesalers. In the five through twelve category, dealers accounted for 44.7 percent versus 36.7 percent for the wholesalers (Table G53).

Within the wholesale segment, dealers play a prominent role. One recent study indicated that in 1984 dealers accounted for about 66 percent of the number of outlets supplied by wholesalers. (1985 Petroleum Marketing Databook, Petroleum Marketers Association of America.)

These data indicate that dealers remain a significant and substantial force within the gasoline distribution network.

Conclusion

The current trends in the industry demonstrate the existence of a viable, competitive industry. The lesson learned from the 1970s was that government intrusion into the marketplace was the most disruptive, anti-competitive activity affecting the industry. Apparently, we have not understood this lesson fully. H.R. 3824 again intrudes the government where it is not wanted or necessary. Divorcement and open supply are remedies in search of problems.

While service station dealers allege that divorcement and legislated open supply will assist them, there is no demonstrable evidence that this is true. The evidence submitted to this Subcommittee by supporters of divorcement does not demonstrate that divorcement will stop the changes occurring in gasoline marketing. Service station dealers continue to go out of business in divorcement states just as they do in nondivorcement states. Divorcement cannot stop this from happening. The costs of legislated open supply clearly outweigh any of its claimed benefits. Prohibiting contract exclusivity probably will mean fewer dealers, producing exactly the opposite result from that intended. The changes that are occurring in the marketplace are market-driven, competitive responses to a number of significant factors affecting the gasoline marketing industry. We conclude that divorcement and legislated open supply are detrimental to the competitive process and are harmful to consumers. The Department opposes enactment of H.R. 3824.

ACQUISITIONS--1985

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value (\$ millions)</u>
Atlantic Richfield	Phillips	Offshore California leases	\$ NA
Atlantic Richfield	Reichhold Chemical	Oil and gas properties	100
Burlington Northern	Southland Royalty Company	Oil and gas properties	695
Exxon	NA	Oil and gas properties	600
Mobil	Texaco	40 percent interest in Wyco Pipe Line Company	NA
Royal Dutch/Shell ¹	Shell U.S.A.	Integrated petroleum	5,700
Shell	Marathon	California oil and gas properties	600
Shell	Occidental	50 percent interest in Columbian oil and gas properties	1,000
Shell	Atlantic Richfield	400 Service stations	NA
Standard Oil (Ohio)	Chevron	Southeast refining and marketing properties and Calcined Coke Facilities	690
U. S. Steel	Texas Oil and Gas	Oil and gas properties	3,560
Unocal	Chevron	Interest in Colonial Pipeline	130
TOTAL			\$ 13,075

¹ Royal Dutch/Shell's purchase of the outstanding 30.5 percent of Shell U.S.A.'s shares is treated as an acquisition. Some analysts treat the purchase as stock repurchase; however, it appears to be more of an acquisition, since Shell U.S.A. was considered as a separate company by most investors with financial results stated separately.

ACQUISITIONS--1984

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value (\$ millions)</u>
American Petrofina	Champlin	Marketing--11 states	\$ --
Ashland	Daniel, Mann, Johnson, and Mendenhall; Scientific Gas Products Company; Goodyear	Engineering, industrial gas, and adhesives	54
Chevron	Gulf Oil Corporation	Integrated petroleum	13,300
Exxon	Petro-Lewis	Oil producing properties and reserves	--
Mobil	Superior Oil Company, Chevron Corporation	Oil and gas properties	5,720
Pennzoil/ Proven Properties	Petro-Lewis	Oil producing properties	43
Phillips	Aminoil	Oil and gas properties	1,600
Phillips	Geysers Geothermal Company	Geothermal properties	213
Phillips	Seaway Pipelines	57.6 interest-oil pipeline	--
Shell	Petro-Lewis	Oil producing properties	120
Sun	Exeter Oil Company		76
Sun	Petro-Lewis	Gas properties	54

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value</u> (\$ millions)
Sun	Victory Oil Company	Heavy oil properties	281
Superior	Southland Royalty Company	Various oil producing properties	44
Tenneco	Ecko Production, Car-X Service Systems, Creole Gas Pipeline Corporation		249
Texaco	Getty Oil Company	Integrated petroleum	10,200
Texaco	Chevron Corporation	European refinery marketing	217
U. S. Steel	Huskey Oil Company	Oil and gas properties	488
Unocal	The Geysers	Additional 25 percent interest geothermal	285
TOTAL			\$ 32,994

ACQUISITIONS--1983

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value (\$ millions)</u>
Ashland	General Polymers National, Inc.	Plastics	10
Burlington Northern	El Paso Company	Natural gas	1,300
Getty	American Quasat Petroleum Company	Oil and gas properties	25
Phillips	General American Oil Company of Texas	Oil and gas	1,329
Sun	Whitaker Coal Corporation and others	Coal reserves	112
Texaco	Dome	U.S. exploration and production	--
TOTAL			2,675

ACQUISITIONS--1982

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value</u> (\$ millions)
American Petrofina	Texas Oil and Gas	Oil and gas properties	132
Ashland Oil	Schurlock Oil Company	Oil and gas properties and Pipelines	13
Ashland Oil	The Tresler Oil Company	Oil and gas properties	90
Diamond Shamrock	Signor	Refining/marketing	238
Du Pont	Solid State Dielectrics		9
Kerr-McGee	Benedum-Trees Oil Company	Oil and gas properties	32
Mobil Oil	The Anschutz Corporation	Oil and gas properties	500
Occidental Petroleum	Cities Services Company	Integrated petroleum	3,984
Standard Oil (Ohio)	Republic's Kitt Energy Company	Coal properties	105
Standard Oil (Ohio)	McMoran- Freeport	50% interest in oil properties	32
Sun	Pacific Gas and Electric Company (coal reserves)	Coal properties	171
Texaco	ANR	Wyoming natural gas properties	80
U. S. Steel	Marathon Oil Company	Integrated petroleum	5,950
TOTAL			\$ 11,336

ACQUISITIONS--1981

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value (\$ millions)</u>
Amoco	Harbert Corporation	Coal properties	\$ 272
Ashland	U. S. Filter Corporation		403
Ashland	Integon Corporation	Insurance	238
Ashland	Datacare		4
Conoco	U. S. Steel	Coal properties	100
Diamond Shamrock	Amherst Coal Company	Coal properties	290
Du Pont	Conoco	Integrated petroleum	7,800
Getty	Energy Fuels Corporation	Coal properties	70
Getty	Santa Fe International	California oil producing properties	36
Gulf	Kemmerer Coal	Coal properties	331
Occidental	Iowa Beef Corporation	Meat	746
Occidental	Crestmont Oil and Gas	California oil producer	82
Pennzoil	Ogle Petroleum	Offshore California oil	--
Phillips	BioTechnology Corporation		10
Phillips	Sage Energy	Marketing	10
Standard Oil (California)	Windfarms, Ltd. (40 percent of Common Stock)	40 percent interest Wind properties	11

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value (\$ millions)</u>
Standard Oil (California)	Stauffer Chemical	Phosphates	130
Standard Oil (California)	American Gilsonite Company		22
Standard Oil (Ohio)	Gibbs Oil Company	Marketing	106
Standard Oil (Ohio)	U. S. Steel	Coal properties	600
Standard Oil (Ohio)	Kennecott Corporation	Minerals	1,770
Termeco	Houston Oil and Minerals	Oil and gas	417
TOTAL			13,358

ACQUISITIONS--1980

<u>Acquiring Company</u>	<u>Affected Company</u>	<u>Assets</u>	<u>Estimated Value (\$ millions)</u>
Atlantic Richfield	Oxirance	Chemicals	\$ 270
Exxon	Atlantic Richfield	60 percent interest in Colony Shale Oil Project	300
Getty	Reserve Oil and Gas Company	Oil and gas properties	620
Getty	UNC Plateau Mining Company	Coal	60
Getty	ERC Corporation		540
Mobil	Trans Ocean Oil	Oil and gas properties	715
Occidental	Firestone Tire and Rubber	Plastics Division	200
Standard Oil (California)	Stauffer Chemical Company	Phosphate properties	130
Standard Oil (Indiana)	Empire Energy Corporation	Coal	65
Standard Oil (Indiana)	Emerald Mines Corporation	Coal	119
Sun	Texas Pacific	Oil and gas properties	2,300
Superior	Canadian Superior	Oil and gas properties	118
Tenneco	Southwestern Life	Insurance	653
TOTAL			<u>\$ 6,090</u>

Table 28. Changes in FRS Companies' Gasoline Distribution, Selected Years, 1977-1984

Distribution Category	1977	1982	1983	1984	Percent Change from		
					1977	1982	1983
		(millions of barrels)					
Wholesale Volume . . .	941.7	947.5	955.8	993.1	5.3	4.8	3.9
Retail Volume							
Dealer Volume . . .	977.9	667.6	671.8	705.5	-27.9	5.7	5.0
Company-Operated Volume	212.6	268.4	277.2	275.0	29.4	2.5	-0.8
Total Retail Volume	1,190.5	936.0	949.0	980.5	-17.6	4.8	3.3
Direct Volume	195.8	152.5	132.2	115.6	-41.0	-24.2	-12.5
Intersegment Volume .	1.0	5.5	6.6	5.9	490.0	7.5	-11.2
Total Volume	2,329.0	2,041.4	2,043.3	2,095.1	-10.0	2.6	2.5
		(number of outlets)					
Total Retail Outlets	178,921	102,819	99,401	95,601	-46.6	-7.0	-3.8
Company-Operated Outlets	10,400	8,211	8,507	7,801	-25.0	-5.0	-8.3

Source: Form EIA-28.

Table G53. Domestic Gasoline Sales for FRS Companies Ranked by Total Energy Assets, 1983 and 1984

Distribution Channel	All FRS		Top Four		Five Through Twelve		All Other	
	1983	1984	1983	1984	1983	1984	1983	1984
(percent of value shipped)								
Percent Total Value Shipped								
Total Domestic	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Third Parties	-	-	-	-	-	-	-	-
Wholesaler	65.7	65.8	61.6	61.7	36.4	36.7	62.6	63.9
Retailers	34.3	34.2	38.4	38.3	63.6	63.3	37.4	36.1
Company Operated	-	-	-	-	-	-	-	-
Automotive Outlets	14.8	14.6	14.0	11.5	13.1	13.0	18.8	19.2
Lease and Dealer	33.1	34.2	30.3	41.1	64.9	66.7	11.5	10.9
Automotive Outlets	6.3	5.6	6.1	5.6	5.3	5.9	7.9	6.0
Other	-	-	-	-	-	-	-	-
(dollars per barrel)								
Average Price								
Total Domestic	38.84	35.86	38.92	35.62	38.81	36.06	37.23	35.62
Third Parties	-	-	-	-	-	-	-	-
Wholesaler	37.89	36.99	38.33	36.32	36.62	36.61	36.67	36.67
Retailers	41.58	39.65	42.61	38.31	42.69	41.33	39.52	38.76
Company Operated	-	-	-	-	-	-	-	-
Automotive Outlets	38.20	36.28	38.32	36.16	38.89	36.32	38.98	37.84
Lease and Dealer	36.96	35.98	35.13	36.93	37.89	35.46	35.26	33.83
Automotive Outlets	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-

Categories not reported separately before 1981.
 Note: Sum of percentages may not add to total due to independent rounding.
 Source: Form EIA-28.

Mr. MAVROULES. Thank you very much, Mr. Coburn. We will now hear from Mr. Moore and then you will be open to questions. Mr. Moore, if you will proceed?

TESTIMONY OF WINSTON S. MOORE, ASSISTANT DIRECTOR FOR PLANNING, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION

Mr. MOORE. Thank you, Mr. Chairman. I am pleased to have the opportunity to participate in this hearing about competition at the retail and wholesale levels in the gasoline business.

I should note that I am the last-minute replacement for Ron Rowe, who has been your witness on this issue in the past. He is in Federal court this morning attempting to block a merger in a petrochemical industry and could not be with you. Thus, you do not have our petroleum industry expert before you, but I will do my best to substitute for him.

Mr. MAVROULES. I'm sure you'll do well.

Mr. MOORE. The Federal Trade Commission has unanimously opposed legislation of this type at least a half a dozen times in the past and we continue to do so. I am speaking only as a staff member, but I think you have before you, in the package we submitted, a letter approved unanimously by the Federal Trade Commission.

I would ask that my prepared statement and that letter be entered into the record.

Mr. MAVROULES. Without objection, both the statement and, the letter will be included in the record.

Mr. MOORE. I would then like to summarize some of the arguments in support of our position.

Mr. MAVROULES. Please.

Mr. MOORE. While this bill states that its purpose is to improve competition in this industry, we believe it would have the effect of harming competition by raising prices to consumers.

The effect of divorcement—of preventing integrated operation—removes a major competitive force from the retail level in the gasoline business. It would simply take that force away and remove competitive pressures.

The open supply notion proposed in H.R. 3824 is, I believe, an interesting notion, but not something we should require by legislation. It may well be that people through voluntary arrangements may be able to distribute more than one brand of gasoline. Consumers may respond favorably to that form of retailing.

We have seen enormous numbers of changes in the gasoline industry over the past 10 or 15 years in response to increasing costs, changes in technology and what not. It may well be that supermarkets for gasoline would be the way that this industry will voluntarily evolve in terms of distributing gasoline, but there is absolutely no reason for us to guess that this evolution will in fact occur and impose it by law on the major refiners.

Prohibiting exclusive dealing in this business will, as the prior witness stated, lower the value of trademarks and advertising that the major oil companies have invested in over the years and would create a disincentive for them to continue in the gasoline retailing

business. Since we have no way of knowing what the future will be, it would be unwise to impose a no exclusive dealing rule on this business. That, along with divorcement, would be equivalent to prohibiting Kuppenheimer stores and London Fog, outlets in other lines of business that consumers find very valuable.

The effect of bills such as this, we believe, would be to raise the margins at the retail level. We are quite sympathetic to the plight of small independent businessmen in dealing with dislocations in gasoline retailing, but not to the extent of raising costs to the American consumer. It is our mandate and our obligation at the Federal Trade Commission to speak up for the interest of consumers.

We believe that to the extent that there are predatory practices or there may be predatory practices in this industry or in any other, that the existing law does provide a remedy. It is a remedy that depends not only on the Federal enforcement agencies. There is a private right of action for predation. Individual businessmen can bring such actions, and, as the prior witness mentioned, there are below cost sales statutes in a number of States that also permit private lawsuits in some cases. Therefore, when there is a documentable case of predation, there does exist a legal remedy.

It is indeed difficult to prove predation. But there are a number of cases in other industries where dealers, who were terminated or squeezed or in some sense had the value of their businesses expropriated, have brought lawsuits and have recovered in court over the years. There are indeed remedies.

Finally, it is the judgment of the petroleum experts at the Federal Trade Commission that retail gasoline markets are unlikely to be subject to monopolistic behavior and predatory pricing. Predation, the complaint we most often hear in this area, is a subset of monopolistic behavior. One needs to have a significant share of the market in order to make predation work. The branded network of lessee dealers is one of the ways that the major oil companies compete with each other. We believe that refiners have no logical motive to wage war on their own franchised dealers. Rather refiners and franchised outlets are linked by mutual interest because lessee dealers are the predominant distribution system for direct gasoline sales by major integrated refiners. Only a small percentage of the gasoline stations in the United States are actually operated by the major integrated refiners themselves.

The Federal Trade Commission's September 1982 study, "Mergers of the Petroleum Industry," concluded that wholesale and retail gasoline markets were unconcentrated at the national level and in general only moderately concentrated in particular geographic regions.

Given the continuing importance of branded franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicates it would be irrational for an individual refiner to charge its franchise dealers prices that would cause them either to secure new sources of supply or to go out of business.

The likely result of such irrational behavior in an era of reduced gasoline demand and plentiful supplies would be that the refiner would face a decrease in market share and increase in excess capacity and higher per unit cost. Thus individual gasoline franchi-

sors are not likely to engage in predation against the mainstay of their own retail distribution system—their franchised dealers.

Therefore, we at the FTC conclude that the proposed alteration in existing gasoline supply contractual obligations and vertical divorcement of retail gasoline stations are likely to have harmful consequences for both competition and consumers. In short, H.R. 3824 would not enhance consumer welfare but rather would serve to insulate one business segment—retail gasoline dealers—from the rigors of the market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as H.R. 3824 would interfere with this competitive process and would result in higher consumer prices. For these reasons, we believe H.R. 3824 should not be enacted.

Thank you, Mr. Chairman. I would be pleased to respond to questions you or the other members may have.

[Mr. Moore's prepared statement, with attachments, follow:]

PREPARED STATEMENT OF WINSTON S. MOORE, ASSISTANT DIRECTOR FOR PLANNING,
BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION

Chairman Mavroules and Members of the Subcommittee: thank you for this opportunity to present the views of the Federal Trade Commission's staff on the effects on competition and consumers of proposed House Resolution 3824, the "Motor Fuel Sales Competition Improvements Act of 1985." This bill is similar to other legislation offered in the Senate and House, and in state legislatures, to rectify purported market failures and antitrust problems in gasoline markets. The Commission has previously approved comments by its staff opposing such legislation. The Commission also has opposed similar legislation introduced in the Senate Judiciary Committee, S. 1140 (a copy of a Commission letter to Senator Thurmond dated July 9, 1985, is attached). This statement will summarize the Commission's previous concerns with legislation of this type.

Summary of Opposition to H.R. 3824

The bill's stated purpose is to "amend the Clayton Act to preserve and promote wholesale and retail competition in the retail gasoline market, and for other purposes." The Commission endorses these goals, but opposes the specific provisions of H.R. 3824. There is no credible evidence that the anticompetitive practices the bill purports to correct exist. Present federal laws are sufficient to remedy predatory pricing and collusion should these practices occur. Moreover, legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and would increase the costs of gasoline distribution, eliminate legitimate price competition, and raise prices for motor fuel to consumers.

1. There is no credible evidence of anticompetitive conduct by refiners and producers to support H.R. 3824.

If the purpose of H.R. 3824 is to protect gasoline franchisees of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers, the bill is unnecessary. There is simply no credible evidence that such practices are either occurring or could successfully be used to harm gasoline dealers. In fact, a DOE examination of the state of competition in gasoline marketing in the United States, both before and after the decontrol of petroleum refining and marketing in 1981, indicates that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. Claims that refiners "subsidize" their own outlets to harm their franchisee dealers are unsubstantiated.

The studies also indicate that refiners have no logical motive to wage war on their franchised dealers. Rather, refiners and their franchised outlets are linked by mutual interest, because lessee-dealers are the predominant distribution system for direct gasoline sales by major, integrated refiners. Only a small percentage of the gasoline stations in the United States are operated by major, integrated refiners.

Moreover, the Commission's September 1982 study, Mergers in the Petroleum Industry, concluded that wholesale and retail gasoline markets were unconcentrated at the national level and, in general, only moderately concentrated in particular geographic regions. Given the continued importance of the branded,

franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicates it would be irrational for an individual refiner to charge its franchisee-dealers prices that would cause them to either secure new sources of supply or go out of business. The likely results of such irrational behavior in the current era of reduced gasoline demand and plentiful supplies would be that the refiner would face a decrease in market share, an increase in excess capacity, and higher per unit costs. Thus, individual gasoline franchisors are not likely to engage in predation against the mainstay of their own retail distribution system, their franchised dealers.

2. Monopolistic and predatory behavior is subject to prosecution under existing federal laws.

Even if predatory or monopolistic behavior by refiners were found to exist, passage of H.R. 3824 is unnecessary. H.R. 3824's prohibition against refiner or producer collusion is unnecessary because such conspiracies are subject to the criminal and civil prohibitions of the Sherman Act and Section 5 of the FTC Act.

Section 3A of the bill, prohibiting individual refiners or producers from requiring their dealers to buy more than 70 percent of their gasoline from them, and prohibiting limitations by refiners and producers on conversion of existing storage tanks for alternative gasoline supplies, also is unnecessary. There is no evidence of widespread anticompetitive abuses associated with minimum volume requirements and restrictions on usage of refiner-owned storage tanks in current franchise contracts.

3. Legislated lessor-lessee contract alteration and vertical divorcement are unnecessary and would raise costs, diminish price competition, and raise gasoline prices to consumers.

Finally, H.R. 3824 should not be used to redress perceived contractual imbalances between refiners or producers and their lessee-dealers; Congress has already addressed this concern through its earlier passage of the Petroleum Marketing Practices Act of 1978 ("PMPA"). The legislative history of the PMPA shows that it was the intent of the Congress to balance the franchise relationship in a more equitable manner. H.R. 3824 should not be allowed to alter this balance without a full study of its effects.

Passage of H.R. 3824 in fact may be injurious to franchisees, because its requirements would appear to lessen the value of a franchised dealer network to an integrated refiner. Therefore, although direct refiner-operated stations presently constitute only a small percentage of all retail gasoline stations, passage of H.R. 3824 might encourage abandonment of franchised dealer outlets in favor of company-controlled outlets, assuming that the marketing divorcement part of H.R. 3824 would not be enacted.

The antitrust laws deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs through vertical integration. In contrast, the prohibition against refining/marketing integration found in H.R. 3824 would arbitrarily require marketing divorcement according to the amount of aggregate refinery capacity of certain refiners. By denying firms the possibility of increasing efficiency through vertical

integration, this legislation could add costs to the distribution of gasoline in the United States, costs that would be borne by consumers.

The potential harm of divorcement bills is illustrated by the experience of Maryland, which has already enacted legislation similar to that now being proposed by H.R. 3824. One study, described by DOE as perhaps "the best empirical analysis of the effects of Maryland's divorcement law," has estimated that Maryland consumers are now paying millions of dollars more per year than they would have been paying if the divorcement law had not been enacted.

Conclusions

Drawing upon an ongoing examination of energy competition issues, the Commission concludes that the proposed (1) alteration of existing gasoline supply contractual obligations, and (2) vertical divorcement of retail gasoline stations, are likely to have harmful consequences for both competition and consumers. In short, H.R. 3824 would not enhance consumer welfare, but rather would serve to insulate one business segment, retail gasoline dealers, from the rigors of the free market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as H.R. 3824 would interfere with this competitive process, and would result in higher consumer prices.

For these reasons, H.R. 3824 should not be enacted.

Thank you for your attention, Mr. Chairman. I would be pleased to answer any questions you or other members of the Committee may have.



OFFICE OF
THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON D.C. 20580

July 9, 1985

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of May 20, 1985, requesting Federal Trade Commission views on S. 1140, the "Motor Fuel Sales Competition Improvements Act of 1985." This bill is similar to other legislation offered in the Senate and House, and in state legislatures, to rectify purported market failures and antitrust problems in gasoline markets. The Commission's staff has previously opposed such legislation.¹ The Commission is opposed to the enactment of S. 1140 because this bill is anticompetitive and would be harmful to consumers.

Description of S. 1140

The bill's stated purpose is "[t]o amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public." Section 2(a) of the bill would make it unlawful for any petroleum producer or refiner, "directly or indirectly, to require any retail motor fuel dealer to purchase more than 70 percent of the monthly retail sales of motor fuel from such producer or refiner or to prohibit the use or conversion of storage tanks and dispensers as provided in subsection (c)."

¹ The Commission's staff has filed comments opposing passage of South Carolina House Bill 2663 (marketing divorcement and below cost selling); North Carolina Senate Bill 73 (below cost selling); and Washington Senate Bill 3418 (marketing divorcement). The FTC's Bureau of Competition Assistant Director Ronald B. Rowe has testified in opposition to U.S. House Resolution 5023 in 1984 (below cost pricing), and in opposition to H.R. 1362 in 1981 (marketing divorcement and below cost selling).

Section 2(b) of the bill would make it unlawful for a producer or refiner to collude with any other producer or refiner to require retail dealers to carry more than 70 percent of the suppliers' fuel or to prevent use of storage tanks to store other suppliers' fuel.

Section 2(c) would require trademarked dealers to notify their customers if they carry and dispense motor fuel at one or more pumps that is not supplied by the refiner or producer whose trademark or trade name is displayed by the dealer.

Section 3 would make it unlawful for any "large integrated refiner to operate any motor fuel service station in the United States," although such refiners are not prohibited under Section 4 of the bill from owning the underlying assets of the service station, as long as the refiner does not participate in any way in operating the station. The prohibition in Section 3 would become effective "one year after the date of the enactment of this Act." [Sec. 6(c)]

Under Section 5 of the bill, a "large, integrated refiner," as used in Sections 3 and 4 of the bill, is defined as a refiner that has thirty percent crude oil self-sufficiency and whose total refining capacity exceeds 175,000 barrels per day.

Section 6 of the bill would authorize a federal district court civil action brought by the Federal Trade Commission to prevent or stop violations of S. 1140, "or any regulation promulgated thereunder," and gives the district courts certain jurisdiction to restrain violations, to require compliance, and to "impose monetary penalties under the same terms and conditions as provided in Section 5(m)(2)(A) of the Federal Trade Commission Act, and to order such additional equitable relief as it deems appropriate." [Sec. 6(a)] Private civil actions by "any other person affected" by a violation of S. 1140 would allow the successful plaintiff to obtain monetary damages and equitable relief in any district "in which the plaintiff resides or is doing business, or in which the defendant resides, or is doing business." [6(b)(1) and (2)]

Finally, S. 1140 would require the Commission to "prescribe regulations for the collection of information" necessary to determine which refiners would and would not be permitted to operate retail gasoline outlets. [Sec. 6(d)(1)]

Summary of Opposition to S. 1140

S. 1140, although facially different from the myriad of other retail divorcement and "below-cost" pricing legislation unsuccessfully urged in the United States Congress and in many state legislatures, is but a new variety of the same species. Although such bills are usually described by their proponents as necessary to protect dealers from the "monopolistic" and "predatory" practices of their suppliers, no credible evidence has been found that gasoline suppliers have engaged in such practices. None of the provisions of S. 1140 would in any way increase competition; the bill's effect rather would be to protect and increase profit margins for branded gasoline dealers as well as other gasoline dealers. Price competition would be thereby debilitated and the result would be higher gasoline and motor fuel prices for consumers in all regions of the country.

The Commission opposes the specific provisions of S. 1140 because: (1) there is no credible evidence that the anticompetitive practices the bill purports to correct exist; (2) present federal laws are sufficient to remedy predatory pricing and collusion should these practices occur; and (3) legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and would increase the costs of gasoline distribution, eliminate legitimate price competition, and raise prices for motor fuel to consumers.

1. There is no credible evidence of anticompetitive conduct by refiners and producers to support S. 1140.

Proponents of legislation like S. 1140 maintain that its passage is necessary to protect gasoline franchisees of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers. They argue that it is unfair for refiners to operate retail gasoline outlets in competition with their franchised gasoline dealers. According to this view, the refiners "subsidize" their own retail operations by providing gasoline to their own outlets at internal transfer prices that are both "below cost" and below the wholesale prices charged to independent dealers.

We are aware of no evidence that such subsidization has occurred or is occurring anywhere in the United States. In fact, an examination of the state of competition in gasoline marketing in the United States, both before and after the decontrol of petroleum refining and marketing in 1981, indicates that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. Following enactment of

Title III of the Petroleum Marketing Practices Act in 1978, 15 U.S.C. § 2841, the Department of Energy ("DOE") was required to study whether the alleged "subsidization" of retail gasoline operations of major refiners actually existed and, if it did, whether the practice was predatory or anticompetitive. The final report to Congress, published in January 1981,² was based on an extensive study of pricing data in several Standard Metropolitan Statistical Areas for 1978, as well as on internal oil company documents subpoenaed by the DOE staff. The study concluded that there was no evidence of such subsidization. In 1984, DOE published a report that further substantiated its 1981 findings.³

In its 1984 report, DOE presented the results of an extensive study of gasoline marketing since decontrol. DOE concluded that the increased pressures on gasoline retailers since 1981 were not caused by anticompetitive behavior by oil companies. Rather, the decline in the overall number of retail outlets and the intensification of competition among gasoline marketers could be attributed to decreased consumer demand for gasoline and a continuing trend toward the use of more efficient, high-volume retail outlets.⁴ Statistics published by DOE and industry publications, such as the Lundberg Letter, indicate that since federal controls were removed in January 1981, the public has been the beneficiary of vigorous price competition.

DOE case studies have revealed no instances of predatory behavior on the part of major gasoline refiners. Instead, the studies indicate that the fortunes of refiners and their franchised outlets are inextricably merged, and that the two groups "form a mutually supporting system backed by company advertising and promotion."⁵ Indeed, lessee-dealers have continued to be by far the largest outlet for the direct gasoline

² DOE, Final Report: The State of Competition in Gasoline Marketing, January 1981.

³ DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers, January 1984 draft report [hereinafter cited as 1984 DOE Report].

⁴ Id. at 125-32.

⁵ Id. at 11.

sales of the major, integrated refiners.⁶ In fact, only 3.3 percent of the gasoline stations in the United States are operated by the major, integrated refiners themselves.⁷

In the context of merger analysis, the Commission's September 1982 study, Mergers in the Petroleum Industry, concluded that wholesale and retail gasoline markets were unconcentrated at the national level and, in general, only moderately concentrated in particular geographic regions. Given the continued importance of the branded, franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicates that it would be irrational for an individual major refiner-franchisor to charge its franchisee-dealers prices that would cause them to either secure new sources of supply or go out of business. The likely results of such irrational behavior in the current era of reduced gasoline demand and plentiful supplies would be that the refiner would face a decrease in market share, an increase in excess capacity, and higher per unit costs. Thus, individual gasoline franchisors are not likely to engage in predation against the mainstay of their own retail distribution system, their franchised dealers.

2. Monopolistic and predatory behavior is subject to prosecution under existing federal laws.

Even if predatory or monopolistic behavior by refiners were found to exist, it could be reached under the Sherman Act, the Clayton Act, or the Federal Trade Commission Act.

Section 2(b)'s prohibition against refiner or producer collusion is unnecessary because such conspiracies are subject to the criminal and civil prohibitions of the Sherman Act. Conspiracies in restraint of trade also violate Section 5 of the FTC Act.

Section 2(a), prohibiting individual refiners or producers from requiring their dealers to buy more than 70 percent of their gasoline from them, and prohibiting refiners and producers from

⁶ In 1981, the eight largest refiners, who, in the aggregate, accounted for about half of all gasoline sales, sold approximately eight times more gasoline through lessee-dealers than through refiner-owned retail outlets Id. at 146 (Table A-10).

⁷ Lundberg Letter, Vol. XI, No. 36, July 6, 1984, at 3.

preventing their dealers from converting existing storage tanks for alternative gasoline supplies, also is unnecessary and unwise. These provisions might be justified if there were evidence of widespread anticompetitive abuses.

As discussed in the last section, however, allegations of oil company anticompetitive practices and behavior are simply not supported by any credible evidence. Certainly, as a group, the major refiners have not been engaged in predation against their branded franchisees, who constitute the mainstay of their distribution network. Nor does it seem reasonable to conclude that individual oil producers and refiners have in any way been attempting to drive their own franchisees out of business by operating company-owned retail outlets.⁸

3. Legislated lessor-lessee contract alteration and vertical divorcement are unnecessary and would raise costs, diminish price competition, and raise gasoline prices to consumers.

One proponent of the bill contended that Section 2 of S. 1140 is necessary because it "extends throughout the industry the settlement achieved in Bogosian v. Gulf Oil Corp.," 1985-1 Trade Cas. (CCH) ¶ 66,510 at 65,548 (E.D. Pa. 1985).⁹ However, the litigation in Bogosian never resolved the issue of whether supplier abuses had actually occurred. The Bogosian settlement preceded any ruling on the merits of the plaintiff's antitrust claims, and the Bogosian judge resisted attempts to enlarge or modify the consent decree in ways that are now being urged by the proponents of this legislation. Indeed, District Judge VanArtsdalen gave the following response to disappointed members of the Bogosian class suggesting that their claims would likely

⁸ See supra notes 5 and 6 and accompanying text.

⁹ Supra note 7 and 8. Plaintiffs in this class action private suit charged that the major oil company defendants conspired by implementing and maintaining a system of gasoline distribution in which the defendants would own and lease gasoline stations to independent operators so as to prevent plaintiffs from buying their gasoline supplies from anyone but their lessors. The restraints were enforced, according to plaintiffs, by illegal tie-ins conditioning the lease of a service station and the use of the refinery brand name and trademark upon a dealer buying all his gasoline from the refiner-lessor.

have been found without merit at trial:

The "risks" of establishing liability in this case were great. For both the damage and injunctive class, proving liability at trial would have been extremely difficult. The plaintiffs clearly had no direct proof of a conspiracy.

[*Bogosian v. Gulf Oil Corp.*, 1985-1 Trade Cas. (CCH) ¶ 66,510 at 65,548 (E.D. Pa. 1985)] Judge VanArtsdalen also suggested that, without such direct proof, proving antitrust violations "would have been a monumental task for plaintiffs." *Id.*

The district judge also gave the following response to plaintiffs who complained that the relief on installation of individual fuel tanks and pumps was inadequate:

As to the contention that the right to install individual tanks and pumps or take other steps to de-brand a station is purely illusory, the agreement at least recognizes the existence of such a right. Only time will tell whether and to what extent this right may be exercised by lessee-dealers. If, in fact, as plaintiffs have contended, supplies of gasoline could be purchased by service station dealers at a substantially reduced price if allowed to be purchased on a free and open market, undoubtedly some will find it economically advantageous to install separate tanks and pumps. [*Id.*]

In sum, although the proposed requirements of Sections 2(a) and 2(b) of S. 1140 would greatly expand the agreed-to relief in the *Bogosian* settlement, their enactment, without extensive further analysis would appear to ignore the sense of Judge VanArtsdalen's opinion of the allegations and claims for relief by the *Bogosian* plaintiffs.

Moreover, to the extent that S. 1140 is intended to redress imbalances between refiners or producers and their lessee-dealers, Congress has already addressed this concern through its earlier passage of the Petroleum Marketing Practices Act of 1978 ("PMPA"). The legislative history of the PMPA shows Congressional concern over alleged abuses of the franchise

relationship.¹⁰ Because of perceived unequal bargaining positions between major refiners and their individual dealers, franchise agreements were regarded as adhesion contracts in many instances. For that reason, the PMPA represented Congress' legislative solution to balance the franchise relationship in a more equitable manner. In contrast, S. 1140 would abandon such a balanced approach and skew the balance sharply in favor of gasoline dealers. Such an alteration without a full study of its effects is clearly not warranted and may be injurious rather than helpful to franchisees. This is because the requirements of S. 1140 would appear to lessen the value of a franchised dealer network to an integrated refiner. Although direct refiner-operated stations presently constitute only a small percentage of all retail gasoline stations,¹¹ passage of S. 1140 might encourage abandonment of presently favored franchised dealer outlets in favor of company-controlled outlets, assuming that the marketing divorcement part of S. 1140 would not be enacted.

Finally, the enforcement standards developed over the years in federal case law under the Sherman, Clayton, and FTC Acts and their remedial provisions, deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs through vertical integration. In contrast, the prohibition against refining/marketing integration found in S. 1140 would arbitrarily require marketing divorcement according to the amount of aggregate refinery capacity of certain refiners. By denying firms the possibility of increasing efficiency through vertical integration, this legislation could add costs to the distribution of gasoline in the United States, costs that would be borne by consumers. Prices would also rise as a result of the elimination of competition from refiner-owned stations, which tend to be low-cost, gasoline-only outlets.

The potential harm of divorcement bills is illustrated by the experience of Maryland, which has enacted divorcement legislation similar to that now being proposed by S. 1140. Economists in one study, described by DOE as perhaps "the best empirical analysis of the effects of Maryland's divorcement

¹⁰ See Senate Report No. 95-731, 95th Cong., 2d Sess., 15-19, 29-43 ("Senate Report").

¹¹ See supra note 6 and accompanying text.

law,¹² have estimated that Maryland consumers are now paying over \$15 million dollars more per year than they would have been paying if the divorce law had not been enacted.¹³

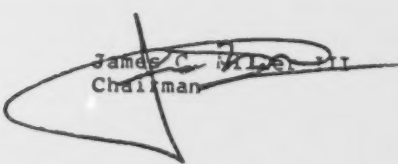
Conclusions

Drawing upon our ongoing examination of energy competition issues, we conclude that the proposed (1) alteration of existing gasoline supply contractual obligations, and (2) vertical divorce of retail gasoline stations, are likely to have harmful consequences for both competition and consumers. In short, S. 1140 would not enhance consumer welfare, but rather would serve to insulate one business segment, retail gasoline dealers, from the rigors of the free market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as S. 1140 would interfere with this competitive process, and would result in higher consumer prices.

For these reasons, the Federal Trade Commission urges that S. 1140 not be enacted.

By direction of the Commission.


James C. Miller, Jr.
Chairman

¹² 1984 DOE Report, supra note 5, at 105.

¹³ See Barron & Umbeck, A Dubious Bill of Divorcement, Regulation, Jan.-Feb. 1983, at 29. See also Testimony of Pester Corp., Crown Central Petroleum Corp., on Oct. 21, 1981, before the United States Senate's Judiciary Committee, on a nationwide divorce bill, S. 326; Barron & Umbeck, The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets, 27 J. Law & Econ. 313 (1984).

Mr. MAVROULES. Thank you very much for your testimony. Let me kick it off with a couple of questions here. I'm sure my colleagues will have many that they want to ask you.

This would probably go to you, Mr. Coburn. The 1984 report on deregulated gasoline marketing appeared just in time for public presentation and hearings on amendments to the Petroleum Marketing Practices Act.

Could you tell me who ordered the study, and why?

Mr. COBURN. This study was a followup study that we did. The first study we did on gasoline marketing came out in 1981. It was a congressionally mandated study as part of the Petroleum Marketing Practices Act of 1978. It came out just about the time when regulations were being lifted from the petroleum industry.

After about a year or two of watching that industry without regulation, the Department decided that it was time to take another very close, hard look to see what had changed, if anything, after regulations were lifted. As a result we did the study to take a look at the market in a deregulated environment.

Mr. MAVROULES. Have you done a final version of that report, by the way?

Mr. COBURN. No; we have not.

Mr. MAVROULES. Are you going to?

Mr. COBURN. No; we will not.

Mr. MAVROULES. Let me ask another question here. Why is it that the marketer groups, including dealers and jobbers, have not had the opportunity for input into that report?

Mr. COBURN. Well, I think everyone had input into that report. We submitted the report and asked for comments, and they did submit statements to us about the report. We did talk with a variety of groups, including marketer groups, when we were putting together the report.

Mr. MAVROULES. You are saying they had the opportunity to give input into that report? They had that opportunity?

Mr. COBURN. Absolutely.

Mr. MAVROULES. I just wanted to get that as part of the record here.

In discussing open supply, the Department states that while it appears to increase competition, it may reduce the value of the dealer to the supplier.

Aren't dealers capable of judging for themselves how much product they should buy from other suppliers?

Mr. COBURN. Well, the problem isn't quite that simple. Open supply, when it is in a legislative situation like this bill proposes, basically prohibits a full exclusive contract or a requirements contract. Open supply can be negotiated—there are negotiated open supply arrangements in the marketplace. The Department doesn't have any problems with that. Or if it is through a lawsuit like the *Bogorian* case, the Department doesn't have any problems with that. Those situations consist of two individuals who are basically bargaining back and forth for an open supply situation. But when legislation interferes with the ability to require an exclusive contract if the refiner thinks that's the best way to operate, then you are changing the economics of a dealer situation. That's the part

we do not like and we oppose—the legislative solution and not the negotiated solution.

Mr. MAVROULES. Let me just ask one other question. Then I will defer to my colleagues.

The Department states that when company operations do well, we see dealers do well and vice-versa. On the next line you state that on the average, a 1-percent increase in cost can result in a 0.27-percent increase in the lessee-dealer volume.

How do you explain this contradiction?

Mr. COBURN. It is not really a contradiction. If you look at the graph that we have in our report, you will see the movements of the two, whether it is the direct, in the direct supply area, the company store as well as the lessee-dealer is moving together. The wholesaler is moving in the opposite direction.

When you do a statistical analysis, which we also did, the relationship isn't one-to-one. Essentially it might be slightly different in the way those two are moving together, but they are moving together. Essentially that's what we meant to try to show.

Mr. MAVROULES. In other words, they don't have to move together on the same volume, 1 percent versus 1 percent? It could be 1 percent versus one-half percent? They are both benefiting by it?

Mr. COBURN. Exactly.

Mr. MAVROULES. Mr. DioGuardi, do you have any questions at this point?

Mr. DIOGUARDI. Thank you, Mr. Chairman. Thank you for your testimony, Mr. Coburn.

Mr. Moore, a question for you. One of the concerns I have heard expressed is that the refiners and perhaps those companies that are integrated drilling companies may be at an advantage in the sense that they can shift profits to subsidize the retail outlets so that this would be unfairly competing against independents.

Now give me a little bit of an education since I am not an attorney. I am a certified public accountant. Is it illegal for integrated companies to divert profits from other operations to subsidize the retail outlets?

In other words, do we have statutes in our anticompetition rules, antitrust, equivalent to dumping? When the Japanese come here and they dump steel on us, we say that that's unfair competition. It is illegal. Do we have those kinds of statutes here domestically and is that what this hearing is all about?

I want to get to the bottom line, the commonsense description of what we are doing here.

Mr. MOORE. I think there are several things I would like to say in response to your question.

One, there is a body of law that looks at least to be analagous to the body of law you refer to in the dumping area. It is primarily the predatory pricing law. Under section 2 of the Sherman Act, if someone sells below cost with the intent to drive out his competitors and with the likely prospect that he can succeed, the victim may recover three times his damages. That is essentially what the law provides.

The difficulty in this particular market, and in many markets, is the low probability of success. Driving competitors out and charging a higher price is unlikely because the same competitors or

others could enter, or reenter the market when the predator tried to move the price back up.

Therefore, the courts and Federal enforcement agencies have generally come to the conclusion that it is unlikely that producers in the position of refiners will engage in a predatory pricing strategy because they will lose money engaging in the strategy unless they have a chance to raise the price later.

Essentially in this market if one of the majors were able to drive all the independents out, it would still have to deal with the other majors in terms of competing. It wouldn't have the opportunity or the power over the price to raise it. That I think is the difficulty.

There is also the price discrimination law, the Robinson Patman Act. There have been hearings on price discrimination in this subcommittee in years past. By and large when one of the competitors is integrated, that competitor does not make an actual sale to a different downstream business. Thus the general price discrimination law in this country doesn't apply to such situations.

Finally, it is unlikely that the refiners would want to move the profits downstream from the refining or producing level to the retail level. It is in the refiner's interest to take the profits upstream and not by accounting or some other means shift them downstream. It's the same profit. There is no prospect of a greater return downstream. There is no advantage to shifting the profits.

Mr. DiOGUARDI. So the bottom line of your testimony appears to be that we have enough laws on the books right now to uncover the abuses if they exist.

If that's the case, are we doing enough in the area of enforcement? Do you get reports from these integrated companies that allows you or some other Federal agency the opportunity to review or to ascertain whether or not these companies are fairly competing against the independents? Is this an enforcement issue and/or is it an issue where the enforcement is not likely for whatever reason, either we are not getting the right kind of reports or it is just not ascertainable and therefore the only desirable result would be divorcement? You tell me.

Mr. MOORE. Well, I think we have sufficient information available or obtainable. The petroleum industry is one of the better known to us primarily because of the regulatory and merger activity that has occurred over the last 5 to 10 years in that industry. There has been a good deal of investigation in that industry, so we have had the information.

In terms of cost to the consumer of any proposal we have seen thus far that is trying to aid the small independent retailer, we believe that all the proposals would harm competition and consumers. This proposal would harm the general competitive process by taking the large integrated businesses out of retailing and, would limit their competition among each other. So as a matter of policy, we have respectfully suggested that the legislation not be passed.

In my view—now I am speaking personally and I should make that clear. What I'm about to say is not something the Commission has passed on: There is a problem that small independents have in dealing with the majors in this industry, particularly on the roller coaster of rising prices and falling prices when the cost-cutting pressures really get intense. Disputes occur which are essentially

contract disputes, not general public law disputes such as antitrust disputes are. I'm sure there are difficulties that the small independent operator has in dealing with the big company, but it is essentially a dispute about what their contract is. Under the law, independents in lots of industries when they have been squeezed and can show a general competitive harm, they have recovered under antitrust as well. So I believe there is a remedy.

I believe that the remedies that do exist have not satisfied the constituency that wants this legislation, but we have steadfastly said that we believe the public interest is not served by such legislation.

Mr. DIOGUARDI. So you believe at this point that you are getting information, financial information, that would enable you or some Government agency to determine whether or not unfair competition is taking place, so these arguments you are making aren't theoretical, you have information?

I would assume that the other side who is pressing so very hard for divorcement must have made some kind of analysis that shows that this in fact is working against them in the marketplace.

Are you aware of those studies? Are there studies that have been presented in financial terms showing specific situations where large integrated companies are using their financial clout or financial base to unfairly compete?

I'm looking for numbers. I'm not looking for theories. I'm a numbers man. I would like to see those numbers.

Mr. MOORE. I do not have them before me. I suspect that you will.

Mr. BEDELL. In previous testimony I think we have clearly shown that that has been the case, at least in California, for example, as they have competed with their own dealers, but I assume that some of the testimony we will have later in the day will address that problem.

I can tell you that in previous hearings we have had testimony which at least in this gentleman's opinion clearly shows that the major company which owned the stations was discriminating against their people who were leasing those stations from them and competing with the major companies.

Mr. DIOGUARDI. Well, if that's the case, why hasn't any action been taken against that company under the laws that now exist on the books? And why is it that we have to go forward with the concept of divorcement that may now tamper with the entire marketplace based on the testimony just given by Mr. Moore?

Are you aware of this situation that the Congressman is referring to?

Mr. MOORE. Well, generally speaking, yes, sir. We have not seen a case that we thought that we should bring. We have had complaints in the past, and I take it that the people who are proposing this legislation find that the private remedies that are available to them are not what they would like, but they are there. They do exist.

Mr. DIOGUARDI. So the Commission has analyzed all available remedies. There are laws on the books; antitrust laws apparently can be involved in cases where the integrated companies, if these are real cases, are unfairly competing.

I am just wondering whether or not you have had the benefit of these analyses and these instances before you made your testimony?

Mr. MOORE. Oh, the Commission has.

Mr. DIOGUARDI. OK. Thank you.

Mr. MAVROULES. Thank you, Joe. Mr. Bedell?

Mr. BEDELL. Thank you. Mr. Coburn, how long have you been in your position?

Mr. COBURN. I have been in my position since 1980 and have been with the Department of Energy since 1978.

Mr. BEDELL. Are you going to stay for the rest of the testimony or is somebody from your Department going to stay for the rest of the testimony?

Mr. COBURN. There will be a representative from the Department here.

Mr. BEDELL. Good, because I think it's important that they should be here.

Your statement says that service station dealers allege that divorce legislation and open supply system—there is no demonstration or evidence that this is true, and I think some of the testimony we have had in the past hearings have been—I have been at quite a few of those hearings—would question greatly some of the statements that you made in your testimony, and that you are not aware of that testimony. I think it is very important that you should be aware of that testimony, so I presume those people will take it back to you.

Mr. Coburn, if you and I were competitors, and if I owned your facility and if I controlled your supply and if I determined a price you had to pay me for the product that you obtained and I controlled the lease that you had to pay me, would you think that was fair and equal competition?

Mr. COBURN. I would think it would be fair if all I did was walk into the station and sign a document with very little up-front money and someone else, you, were putting up the location, putting up the tanks, the facility, supplying me with all my things I need to sell at that station and I didn't have the capital resources to do it. Yes; I think that would be fair.

Mr. BEDELL. That attitude is what has happened in our society. I'm so glad that you said that because that's what happened. At one time we had a system where independent operators were able to buy in the competitive marketplace and supply the public. Because of the money that the major oil companies had, they ended up buying the stations and owning the stations. Then, as they owned the stations, if they decided they wanted to push those independent dealers out, they could take the argument you have just given me and say well, since I own the station and since you are not putting up any money, I can tell you what rent you have to pay as you compete with me. I am going to tell you how much supply you are going to get as you compete with me. I can tell you all of these things as you try to compete with me, and I don't think it is at all surprising what we have seen.

We have seen those independent marketers absolutely pushed out. Now some of us believe that entrepreneurship is a good thing in our society and some of us believe that we shouldn't simply let

those people that have the money which you have indicated if you have got the money, tell their competitors what the devil they can do as they try to compete.

I don't know if divorcement is the whole answer. I don't know what the whole answer is, but I'm damn sure of one thing. What is happening is that we are moving all of this from where there was multiple opportunities for entrepreneurship and competition to where the suppliers are controlling the whole situation.

Now if you really want competition, tell me what it is about open supply that is uncompetitive.

Mr. COBURN. There is nothing inherently uncompetitive or anti-competitive with open supply. It is when it is legislated that there is a problem.

Mr. BEDELL. Just a minute if I might. You said the way to do it is for them to negotiate with people that own the station.

If I own the station and I am supplying you and I want you to buy my product, can you tell me some reason on God's Earth why I would tell you where you can buy it from anybody else, you don't have to buy it from me?

Mr. COBURN. There have been situations where that has occurred.

Mr. BEDELL. I understand. Can you tell me why in the devil anybody would do it?

Mr. COBURN. No; I don't think it is a rational expectation for a person who owns that station to want to sell someone else's gasoline at it.

Mr. BEDELL. So if that's the case, then your statement that you know we can negotiate and that you don't have to legislate it doesn't make any sense in the world.

Mr. COBURN. If you look through the literature, you will find lots of situations where stations, where dealers have gone out and bought their own tanks, put up their own facilities, and have been able to negotiate an open supply situation. You will find it. It is not unheard of, and the problem is that when you try to use someone else's facilities, comingle products from a branded product, then you are basically saying to the refiner I can just use your facilities as I please. A consumer drives in, suddenly he gets or she gets a branded product that is not a branded product from Texaco, or Shell, or Exxon. They are getting someone else's product.

How do you guarantee and how do you make sure that that product is the product that is being advertised? Then you have a very difficult situation in terms of advertising.

Mr. BEDELL. That's exactly the issue we are talking about. The gut issue we are talking about is if anybody accumulates sufficient money—and there have been opportunities for oil companies to accumulate sufficient money because of some of the things that happened—then they should be able to use that money to dictate what happens in the marketplace by buying up all the facilities and saying nobody can compete with them.

That's exactly what has happened. Now I understand your philosophy and I understand your belief in that regard, and that's fine. It doesn't hold up at all when you say that that brings competition, that open supply is a deterrent to competition.

It does hold up when you say if you've got the money, you ought to be able to do as you please in this marketplace and you ought to be able to come in and unfairly compete with others. If that's the way we are headed, that's fine.

I have to tell you I have real trouble with that. I don't think that's the way our society needs to go. I have to tell you I think the damage has already been done so completely by this that there may be some arguments that you have already pretty well killed everybody off with this sort of a situation.

I can't understand the Federal Trade Commission saying open supply, if you really want competition, that open supply is a deterrent to competition.

Can you tell me how you have been able to buy from whom you want to is a deterrent to competition?

Mr. MOORE. Well, if you have a situation where people voluntarily agree to open supply, it certainly can be procompetitive. But what your proposal would do, Mr. Bedell, is to prevent exclusive dealership arrangements, the traditional way of doing business in this industry. It would just knock that source of competition away, and our view is that that would remove competitive pressure.

Mr. BEDELL. Let's say I was making a product like Coca-Cola. If I was so well established in Coca-Cola, and the store said they felt they had to have Coca-Cola, would it be perfectly all right for me, the Coca-Cola Co., to negotiate with all of the chain stores to say they couldn't sell any other soft drink?

Mr. MOORE. If the chain stores would agree.

Mr. BEDELL. It's not illegal?

Mr. MOORE. It depends on how much of the market Coca-Cola has.

Mr. BEDELL. We've got so much of it that we can successfully get, they need our product so badly—I don't care. Take anything else. Take a small item, whatever it may be. Take toilet tissue. If I, if I have enough of the market that I can tell that dealer you can't sell anything else if you are going to carry our product, and that would remove all other competitive products from the market, could I do that? Would that be all right with you?

Mr. MOORE. Not if you have that much market power, no.

Mr. BEDELL. How can you have any more market power than owning the station? You have got that market power. You are telling people they can't buy anything else. Well, I don't know. It's too much argument, but it should be clear what has happened. It should be clear why it is happening.

It is happening because of the policies we have and the laws we have that says if you have got enough money, you can go ahead and push everybody else out of business, that that is what our policy is.

I'm probably prejudiced, but I think we are moving more and more in the direction where big people can run our country. I thought the great strength we had in our society was the opportunity for entrepreneurship, and the reason we don't have it in my opinion to a great extent is because of the attitude of people that are making these decisions. Frankly I mean people in the administration.

I yield back the balance of my time.

Mr. MAVROULES. Thank you, Mr. Bedell. Mr. Kolbe.

Mr. KOLBE. Mr. Chairman, I don't have any questions of this first panel.

Mr. MAVROULES. Well, thank you very much. Mr. Moore, I think Mr. Bedell probably asked if you were going to remain here, at least listen to the next panel. If it is possible, I would appreciate it if you would because they are going to be arguing against what you have been saying here this morning. You might want to listen to them.

Mr. MOORE. Could we leave a representative?

Mr. MAVROULES. Oh, sure. Thank you both very much for your testimony.

Our next panel is Mr. Vic Rasheed, executive director, Service Station Dealers of America; Matthew Gaeta, Shell dealer from West Peabody, MA; Stan Patrick, Exxon dealer, Mettairie; and Jack Houston, National Coalition of Petroleum Retailers.

Our first witness this morning will be Mr. Vic Rasheed. Vic, if you would please proceed?

TESTIMONY OF VICTOR RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA, INC., ACCOMPANIED BY JIM DASKAL, ATTORNEY

Mr. RASHEED. Thank you very much, Mr. Mavroules. We appreciate being here today, and our greetings to Mr. Conte, and, of course, to our old friend, Mr. Bedell, who I think I would like to pay a special tribute to as the gentleman who stood by us for many years.

He may be small in stature, but he's a giant in spirit, and Mr. Bedell, we certainly do appreciate you. You know that.

Mr. Chairman, the issue of divorcing major refiners from retail operations is not new, but it has been given new significance today by a series of recent events in the domestic industry. These show that we have reached a crisis.

Event No. 1. In the last 2 years we have witnessed several huge multimillion dollar mergers which have created unprecedented concentrations of assets and power that caused thousands of jobs. There have been buyouts by major oil companies of independent sources of crude and chains of independent retailers.

The mergers and buyouts combined with market area withdrawals have led to dangerous levels of concentration in the wholesale gasoline market. In States such as West Virginia, Vermont, Delaware, and Iowa, the top four oil companies now control over 80 percent of the gasoline market.

In Kentucky, Arizona, Wyoming, and Maryland, the dominant oil companies have market shares ranging from 55 to 64 percent.

Event No. 2. Since 1981, approximately 115 refineries, including many small independents, have closed, removing an important alternate source of supply for many marketers.

The flourishing independent market in Arizona, for example, has been swallowed up and taken over by the major refiners since the small independent refineries who supplied it were forced to close. Prices have gone from 5 cents below the national average for Mobile in Arizona on November 27 to 14 cents above the average

today. At a time when there is an abundance of product, chains of independent brands now fly the flag of one of the majors to be guaranteed a steady source of supply.

Event No. 3. Since the collapse of world oil prices last December, our 15 major refiners have set themselves up as gatekeepers to the domestic market by virtue of their control of almost 80 percent of U.S. refinery production.

The experience of the past few months has shown all of the \$9 a barrel oil in the Persian Gulf cannot benefit the American motorist until it goes through their refineries and is distributed at prices which truly reflect the lower price of oil.

In the past 4 months, however, the pricing strategy practiced by the majors has shattered the confidence of the American public and many legislators and they have used their refinery control to engage in obvious price manipulation on a national scale. Instead of extending corresponding price cuts across the board to the wholesale market as oil prices dropped, major refiners withheld these cuts until forced to offer them to the wholesale resellers by the competition of cheaper product from independent refiners.

The independents' prices did reflect the drop in oil prices starting as far back as early January. The major refiners, however, did not extend these cuts to their captive customer retail dealers but kept them at an inflated level to create a two-tier pricing system.

When dealers in Texas began buying their brand of gas from jobbers and saving up to 14 cents a gallon, they were threatened with termination by their refiners, as were the jobbers.

Currently there is a class action involving five major oil companies in Texas. The attorneys general in Texas, Connecticut, New Mexico, Arkansas, and other States have started investigations into the pricing policies of the majors.

Outside of metropolitan areas supplied by majors such as Washington, DC, retail prices were often 30 cents a gallon less than they were in this area. Until mid-February, the average dealer was paying his refiners approximately the same price for his gasoline that he paid a year earlier, when the price of oil and gas was at least \$10 a barrel less. The majors did not reduce prices to their captive customer dealers because they knew they had no alternate source of supply. They had nowhere else to go. They had to pay their price, whatever it might be.

As a result, east coast motorists read of 63-cents-a-gallon gasoline prices in the Midwest where independent refiners abound, and are still paying \$1.08 for regular on the east coast.

What has all this got to do with retail divorcement? In one word, it is obviously control. The major refiners want to control a captive market for their product at premium prices, insulated from any competition in the marketplace. Their lockstep pricing policies during the past few months indicates they are very close to achieving this goal. The only real competition that exists in the market today is probably the retail dealer. He must fight for every gallon in sales in a competitive battle for his life, or join the 7,000 dealers that were closed out last year.

If he does not meet sales expectations for his company, his station might be shut down or he may be converted into a convenience store.

Majors, however, are quick to label any restrictions of their efforts to achieve total control of marketing as anticonsumer. In San Francisco, they decried the zoning ordinance, which would allow public input to determine the type of gasoline outlet they prefer, as anticonsumer.

After the passage of the Maryland divorcement law in 1974, they called it anticonsumer. After the U.S. Supreme Court upheld the constitutionality of that law in 1978, they spent millions of dollars to try to discredit it and show it to be anticonsumer.

Last year the first pricing study done in Maryland since controls were lifted showed Maryland dealers to be the most competitive in the country with the lowest retail prices based on the margin of profit, yet the oil companies continue to bring in hired economists to generate figures to make a case to show the Maryland law to be anticonsumer.

The truth is, Mr. Chairman, it is not anticonsumer. It is proconsumer but antioil company. That's the basis of their opposition.

H.R. 3824 has a new open supply section which takes advantage of the class action case settlement in the *Bogosian* case in which 15 major refiners agreed last year that their retail dealers would not be required to purchase 100 percent of their supplies from them.

H.R. 3824 actually requires that dealers purchase more product from their suppliers than some of the companies require. Mobile, for example, stipulates dealers purchase only 50 percent from it. The bill says they should purchase 70 percent.

Passage of H.R. 3824 would put an end to the favored marketing strategy of the majors, and that is called exclusive dual distribution. Today we are witnessing an unprecedented onslaught on dealers as refiners use every devious plot hatched in their conniving mind to force targeted dealers—these are special dealers—out and replace them with high-volume company operations that use this dual distribution strategy, and this is how it works.

The company inflates the wholesale price of its dealer so that they are making anything from 13 to 20 cents a gallon on the wholesale price, and then they have their co-op nearby competing with their own dealers, and the co-op is selling at close to, sometimes a little above, sometimes way below, the dealer's company's price so the dealer has a ceiling on what he can charge at the retail price but he also has a floor under his wholesale price, so that's how dual distribution works, and that way the company feels it has a captive market for approximately 70 percent of its product through dealers and jobbers and through using this the company can sell additional gasoline at cost price for a dealer but it is still a good price for the company.

Numbers alone do not tell the whole story about how the dealers have been forced out of business. Texaco has more than 1,000 System 2000 company operations, and in places like Oklahoma City we have seen a place that had 96 Texaco dealers 10 years ago cut down to 15 dealers today, but they do have 25 company operated System 2,000's which sometimes undercut their dealer by as much as 8 cents a gallon, but they are selling a hell of a lot of gasoline. Some of them sell 400,000 gallons a month.

I'm going to summarize very quickly, Mr. Chairman. Before I do, I do want to mention just one little thing about the way companies are getting rid of some of the dealers.

The latest twist that we have found is in Washington State where Arco is now charging a franchise fee of \$20,000 to renew a lease. In Washington State they now have according to my figures 39 co-ops and 26 dealers. They eliminated five dealers in 1 week not too long ago. I believe, I am told another 15 are expected to fold in 90 days.

As a result of these practices, Washington State has just enacted a law to regulate refiners, including a provision to allow dealers to buy from other suppliers.

The numbers of co-ops as I said are not the real story. The real story is that today they are using commissioned agents. For every company operation you see out there, there is probably two or three commissioned agents. These are locations owned by the major. They are operated on a commission. They are paid perhaps \$4 to \$7 an hour. The operator may be a chain, a management chain that operates maybe 100 locations for the company, and the company, of course, sets the price.

I think, Mr. Chairman, that the dealers and their customers and the national economy today need your help to preserve a national treasure. It is called free competition that allows a small businessman to compete and serve his community as long as he is needed.

This industry today has an economic cancer, and I'm afraid it's terminal. We are in a position right now that we are not just talking rhetoric. We are talking about only 36,000 or 38,000 dealers left who are supplied by the 15 major oil companies, and that's a far cry from 10 years ago. Those companies are still operating, but they are operating with other means, and I think that the company and the commissioned agent are going to be the replacement for the independent dealer.

Thank you, sir.

Mr. MAVROULES. Thank you very much, Mr. Rasheed, and your entire statement, including the graphs, will be included in the record.

[Mr. Rasheed's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF VICTOR RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION
DEALERS OF AMERICA, INC.

Mr. Chairman, the issue of divorcing major refiners from retail operations is not new, but it has been given new significance today, by a series of recent events in the domestic oil industry. These show that we have reached a crisis in an industry which impacts on every American.

Event #1

In the last two years we have witnessed several huge multi-billion-dollar mergers, (such as Chevron/Gulf) which have created unprecedented concentrations of assets and power. They have also cost thousands of jobs in states such as Pennsylvania and Delaware. There have been other buyouts by major oil companies of independent sources of crude, (Mobil/Superior) and chains of independent stations (BP/Gibbs Oil).

The mergers and buyouts combined with market area withdrawals have lead to dangerous concentration levels in the wholesale gasoline market.

In states such as West Virginia, Vermont, Delaware, and Ohio, the top four oil companies control over 80% of the gasoline market. (Attachment 1) In states such as Kentucky, Arizona, Wyoming, and Maryland, the dominant oil companies have market shares ranging from 55 to 64 percent.

These events have ominous forebodings for competition in the gasoline industry at all levels.

Event #2

Since 1981, approximately 115 refineries, including many small independents, have closed, removing an important source of supply for many gasoline marketers. The flourishing independent market in Arizona, for example, has been swallowed up and taken over by the major refiners since the small independent refineries who supplied it were forced to close. Prices have gone from 5¢ below the national average for Mobil (Nov. 27) to 14¢ above (today).

At a time when there is an abundance of product, chains of independent brands now fly the flag of one of the majors to be guaranteed a steady supply of product.

Event #3

Since the collapse of world oil prices last December, our 15 major refiners have set themselves up as gate-keepers to the domestic market by virtue of their control of almost 80% of U.S. refinery production. The experience of the past few months has shown that all of the \$9 barrel oil in the Persian Gulf cannot benefit the American motorist until it goes through their refin-

eries and is distributed at prices which truly reflect the lower price of oil.

In the past four months, however, the pricing strategy practiced by the majors, has shattered the confidence of the American public and many legislators, as they have used their refinery control to engage in obvious price manipulation on a national scale.

Instead of extending corresponding price cuts across the board to the wholesale market as oil prices dropped, major refiners withheld these cuts until forced to offer them to their wholesale resellers by the competition of cheaper product from independent refiners. The independents' prices did reflect the drop in oil prices beginning in early January. The major refiners, however, did not extend these cuts to their captive-customer retail dealers but kept them at an inflated level to create a two-tier pricing system.

When dealers in Texas began buying their brand of gas from jobbers, saving up to 14¢ per gallon, they were threatened with termination by their refiners, as were the jobbers. Currently there is a class action price discrimination suit by Texas dealers against Texaco, Mobil, Shell, Gulf, and Exxon. The attorneys-general of Texas, Connecticut, New Mexico, Arkansas, and others are also investigating refiners' pricing practices.

By granting exclusive price cuts only to their resellers the traditional difference of 3-4 cents per gallon between dealer-buying price and jobber-buying price, quickly spread to 25-30 cents per gallon.

Outside of metropolitan areas supplied by majors such as Washington, DC, retail prices were often 30 cents per gallon less. Until mid-February, the average dealer was paying his refiner approximately the same price for his gas that he paid a year earlier when the price of oil was \$10 per barrel more.

The major refiners did not reduce gasoline prices to their captive-customer, franchised retail dealers because they knew they had no alternate source of supply and must pay their supplier's price, whatever it might be. The dealers' customers were also penalized.

Similarly the major refiners practiced price manipulation depending on the competition from independent refiners in various parts of the country. For example, Amoco in March sold its regular in Baltimore for 26 cents per gallon more than it did in Indianapolis because of the competitive prices prompted by the independent refiners in the Midwest.

As a result, East Coast motorists read of 63 cent per gallon gasoline prices in the Midwest where independent refiners abound, while still paying \$1.08 for regular. (Attachment 3 is a new study done by the Citizen/Labor Energy Coalition demonstrating how refiners have manipulated the market.

What has all of this got to do with retail divorcement? In one word, it is obviously "control".

The major refiners want to control a captive market for their product at premium prices, insulated from any competition in the marketplace.

Their lock-step pricing policies during the past few months, indicate that they are very close to achieving this goal. The only real competition that exists in the market today is the retail dealer. He must fight for every gallon in sales in a competitive battle for his life or join the 7,000 stations closed in 1985. If he does not meet sales expectations, his station might be shut down or he might have to agree to being converted into a convenience store and give up his service facilities as the price of staying in business.

Stations with maintenance and repair facilities have been the main targets for closings or conversions. The resulting attrition is causing a crisis for American motorists. Even though the number of full-service outlets has declined sharply, the volume of automobile servicing and repair done by stations has increased by 50% in three years, according to the Hunter survey. This indicates a growing demand for such services.

"Anti-Consumer?"

Majors, however, are quick to label any restriction of their efforts to achieve total control of marketing as anti-consumer. In San Francisco they decried a zoning ordinance which would allow public input to determine the type of gasoline outlet preferred, as "anti-consumer".

After the passage of the Maryland divorcement law in 1974 they called it "anti-consumer". After the U.S. Supreme Court upheld the constitutionality of the law in 1979, they spent millions of dollars to try to discredit it and show it to be "anti-consumer". Last year, the first pricing study done in Maryland since controls were lifted, showed Maryland dealers to be the most competitive in the country with the lowest retail prices based on their margin of profit. Yet the oil companies continue to bring in hired economists to generate figures to make a case to show the Maryland law to be "anti-consumer". The truth is, Mr. Chairman, it is not anti-consumer; it is pro-consumer but anti-oil-company; that is the basis of their opposition. (Attachment 4, SSDA Study)

SSDA Survey

Ever since the Supreme Court upheld the constitutionality of the Maryland divorcement law, refiners have spent millions of dollars in an effort to discredit that law. The most recent

effort, and the most misleading, is the Arco-Barron-Umbeck report. The authors of that report took a survey of half the stations affected by divorcement, stations selected by oil companies, and claimed prices rose at those stations. They conveniently ignored the fact that federal price regulations caused that rise.

Mr. Umbeck then takes this figure, assumes it to be the longterm effect, and appears at every divorcement hearing nationwide, misleading legislators at every turn.

His study, and the American Petroleum Institute-Sorenson report are misleading because they use short-term figures from the price controlled era to study long-term effects in the decontrolled environment.

Our own survey deals not with econometric theorizing, but the actual results of divorcement in those cities which have divorcement laws.

Our study shows that for the most popular grade of gasoline -- self-serve, unleaded regular -- three of the four lowest prices in the country, after adjusting for state and local taxes, are in the divorcement cities of Wilmington (Delaware), Baltimore (Maryland), and Washington, D.C.

Contrary to Mr. Umbeck's most insidious claim, Maryland dealers have consistently been the most competitive in the country as reflected in their very low markup on gasoline.

Immediately after decontrol, and full implementation of divorcement, Baltimore dealers had the lowest markup on leaded regular and unleaded regular gasoline in the country.

In short, the Arco-Barron-Umbeck report is a confusing,

H.R.3824 differs significantly from its predecessor, H.R.1362, heard by this committee in 1981.

First, the open supply section has been rewritten to take advantage of the Bogosian class-action case settlements in which 15 major refiners agreed that their retail dealers would not be required to buy 100% of their gas from them. H.R.3824 actually requires that dealers purchase more product from their suppliers than some of the companies require. Mobil stipulates dealers purchase 50% from it, the bill says 70%. Also the complex wholesale transfer pricing provisions have been dropped to simplify the bill.

Dual-Distribution

The passage of H.R.3824 would put an end to the anti-competitive practice that we term "exclusive dual distribution". Refiners now pick and choose where they will market and how. The new strategy has been to increase the use of company-operated, gas-only locations to retail under this system of dual distribution.

The company operations sell at retail often below the wholesale price at which product is sold to its franchisee dealers of the same brand.

The functions served by "exclusive dual-distribution" are: (1) to place an artificial ceiling over the retail prices charged by the major's branded dealers, and (2) to maintain an artificial floor under the wholesale or "tankwagon" price which the dealer pays to the major.

It might be argued that direct retail operations benefit the consumer because the prices charged are lower than those charged by dealers.

This raises the question of what these prices might be without "exclusive dual-distribution." If competition existed between oil companies for sales at wholesale to individual dealers, retail prices charged by dealers would likely be equal to or lower than the retail prices presently charged by producers or refiners in "company-operated" stations.

Dual-distribution ignores its devastating effect on retailers of the same brand. Refiners still mercilessly pressure them to sell a required quota of gas, either by being more competitive, (sell below their wholesale cost) open 24 hours, or agree to a conversion to a gas-only, convenience store operation by having their bays demolished and give up their service business. Mobil now requires this in all lease renewals.

Onslaught

Today, we are witnessing an unprecedented onslaught on dealers, as refiners use every devious plot hatched in a conniving mind to force targeted dealers out and replace them with the high-volume company operations that dual-distribution allows.

In Oklahoma City, there were 94 Texaco dealers 10 years ago. Today, there are only 15 plus 25 Texaco company-operations that often retail below dealers' cost, give away free carwashes and do not charge for credit cards. This gives the company-op up to an 8¢/gallon advantage before the dealer pays his rent, which may be another 5¢/gallon.

Texaco now has over 1,000 System 2000 company operations nationwide which feature self-serve units with convenience stores. Eash has a sales volume equivalent to four average stations.

Numbers alone do not tell the whole story. Between 1972 and 1981, company operations increased only 14%, but their sales volume increased 86%. In the same period, dealer sales volume dropped 36%, according to Arco's study, "Turmoil and Competition in Gasoline Marketing."

Arco has found a new way to eliminate dealers by charging them a \$20,000 transfer fee to renew their franchises for three

years. It eliminated five in one week in Washington State and now has 39 co-ops and 26 dealers. Of the dealers, 15 are expected to fold within 90 days. As a result of such practices, Washington State has just enacted a law to regulate refiners including a provision to allow dealers to buy from other suppliers.

Threat to Service and Repair Facilities

The main targets for conversions to gas-only have been full-service dealers with maintenance and repair facilities. The resulting attrition of these stations has caused a crisis for American motorists.

Even though the number of outlets able to offer service and repairs has declined drastically, the volume of automobile service and repair done by them has increased 51% in the past three years (Hunter Publishing Survey). This indicates the growing demand for their services even as their numbers diminish.

The Outlook

The dual distribution system, the concentration of power by fewer oil companies and the lack of alternate sources of supply, will inevitably lead to a type of situation that now exists in Canada.

There five refiners now control distribution. By using company-ops that have undersold their franchised dealers by 40¢ per gallon, dealers were forced to give up their dealer status and become commissioned agents, receiving a commission on gallons sold at the price set by the company. Today, almost every operator in Canada has his retail price set by his company. He has no rights as an independent dealer. He does not compete in the marketplace. As of mid-February, Canadian motorists had not seen the first cent in price cuts at the pump. A government inquiry has alleged Canadian motorists have been overcharged billions of dollars for gasoline. Oil companies are charged with inflating the dealer wholesale price at 27¢ above the true wholesale price.

In the past year major oil companies increased their salaried stations by 7.4% to 6,552, according to a recent Lundberg Letter. (Attachment 5)

This does not include the growing number of commission agents now being used by major refiners. These may operate chains of combination convenience store/gasoline carwash facilities for the majors on commission. They do not own the facility nor the gasoline and do not set prices. They have no protection under the Petroleum Marketing Practices Act and are being used to supplant dealers. They are in effect company operations.

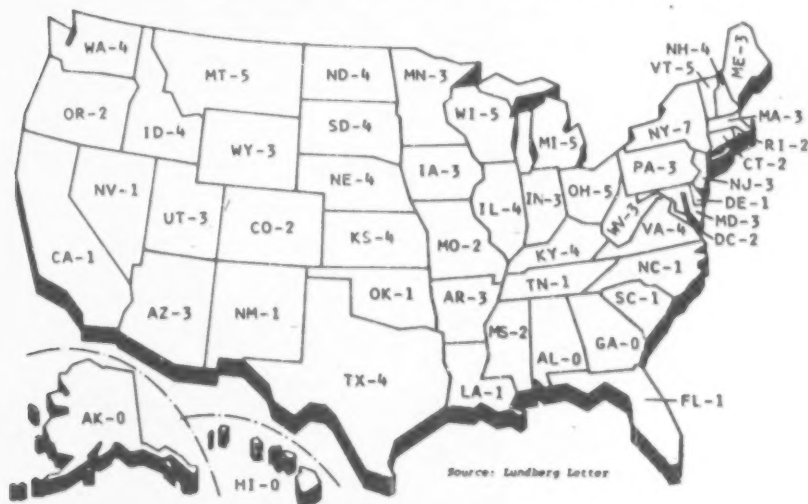
According to the survey, franchised dealers now account for only 26%, (38,852) of the stations supplied by the 15 major refiners.

The passage of H.R.3824 will help preserve the remaining competition in the domestic market.

Oil Company Retrenchment

WHAT DO PULLOUTS DO TO PEOPLE?

NUMBERS OF MAJOR OIL COMPANY PULLOUTS SINCE 1978 BY STATE



STRATEGIC PULLOUTS by most major integrated oil companies over the past several years tend to imply that their branded marketers and direct lessee dealers have to make new supply arrangements. But this is just the tip of the iceberg. Pullouts by majors are creating new breeds of marketers and retailers, as each wave of retrenchment leaves a more independent, untraditional distribution network in its wake. It may well be a corporate responsibility on the part of suppliers and marketers, major and independent alike, that is preventing degradation of the system.

SUMMARY OF MAJOR OIL COMPANY PULLOUTS SINCE 1978

Note: Chevron is making virgin retail entry in
NI, MO, and OK, as asterisked.

	ARCO	AMOCO	GULF	CONOCO	EXXON	MOBIL	PHILLIPS	SHELL	SUN	TEXACO/GETTY	UNION	TOTAL
PADD I												
CT	A						P					AP
DE	A										Up	AO
FL	A											A
GA									N			N
HA	A				Ep		P					--
HO	A			C							Up	ACP
NE		D					P	S				ACU
NC				Cp								OPS
RI	A	U					P	S				C
NJ	A			Cp			P					ADPS
NY	A	Up	Gp	Cp	Ep			Sp		Up		ACP
PA	A			Cp						Up		ADGCEST
RI	A			Cp			P			Up		ACY
SC	A											AP
VA	A			Cp					Np		Up	C
VT	A	U	G	Cp	E		P	S			Up	ACNU
WV	A	U								Up		OGEPS
										Up		ADT
PADD II												
IA			G			Np				T		GHT
IL	Ap			Cp				Sp				ACSY
IN	A			Cp								ACT
KS			G			N					Up	GHTU
KY		Up		Cp	E					Up		DECT
MT	A		Up	Cp					N			AGCNT
MI			G									GHT
MO					Np					Up		MT
NE			G						N	Up		GHT
OH	A		Gp	Cp	E				N	Up		GHT
OK		U										ALGET
SD			G						N	Up		U
TX	A			Cp					N			GHT
WY			G						N			N
										Y		AGCNT
PADD III												
AL												--
AR		U							N	Y		ONY
LA												Y
MS									N	Y		WY
NH												Y
TX	A	Up						Sp		Y		ADSY
PADD IV												
CO			G			N						GH
TD			G	Cp		N				Up		GHT
MT		U	G			P						UGHT
UT			G								U	GHT
WY			G			N					U	GHT
PADD V												
AK												--
AZ			G	Cp				Sp				CCS
CA			G									G
HI												--
WV			G									G
OK		U	G									OG
WA		U	G				P			Up		UGPT

Note: p= partial pullout.

Source: Lundberg Letter

Table F1. Finished Gasoline Measures of Concentration and Sales Volumes (Percent)

	Finished Gasoline			
	Top 4 Companies	Top 8 Companies	No. of Suppliers	Sales Volumes
Alabama	35	57	35	1,695,425
Arizona	50	67	20	1,344,850
Arkansas	47	67	41	1,078,898
California	57	82	35	11,104,560
Colorado	43	68	38	1,412,324
Connecticut	47	78	23	1,184,684
Delaware	82	94	17	346,540
District of Columbia	88	100	13	153,954
Florida	38	58	36	4,984,436
Georgia	38	62	38	2,739,718
Idaho	52	65	20	442,500
Illinois	52	74	37	4,039,990
Indiana	52	72	38	2,332,423
Iowa	41	67	37	1,807,838
Kansas	50	73	39	1,845,337
Kentucky	59	80	40	1,246,386
Louisiana	43	65	41	1,787,532
Maine	57	88	13	558,577
Maryland	57	84	26	2,132,582
Massachusetts	48	73	23	3,889,590
Michigan	51	75	33	2,377,242
Minnesota	65	82	30	1,240,017
Mississippi	38	62	38	2,204,087
Missouri	38	61	42	4,985,848
Montana	66	80	21	739,083
Nebraska	41	68	33	410,945
Nevada	54	81	22	218,254
New Hampshire	57	81	17	4,256,470
New Jersey	46	73	29	796,922
New Mexico	50	70	33	4,420,464
New York	42	65	34	2,890,537
North Carolina	40	64	35	410,139
North Dakota	61	83	26	2,274,337
Ohio	67	85	32	1,784,870
Oklahoma	48	73	27	1,228,468
Oregon	68	96	21	4,808,756
Pennsylvania	52	84	34	415,943
Rhode Island	55	88	18	1,485,238
South Carolina	43	65	34	378,763
South Dakota	41	65	20	2,481,054
Tennessee	39	62	47	10,414,788
Texas	42	82	66	698,833
Utah	51	81	21	112,310
Vermont	77	84	18	2,395,728
Virginia	44	68	38	2,011,536
Washington	58	80	22	573,864
West Virginia	62	93	22	1,886,817
Wisconsin	41	68	35	2,021,800
Wyoming	58	84	24	

volume weighted prices are calculated from these data and published in the *Petroleum Marketing Monthly*. Average wholesale prices for the 48 States of the continental United States and the District of Columbia for January, March, July, and December were employed in this study.

The EIA-782C is used to gather sales information from primary suppliers who make the first sale of a product into a State for consumption in that State. EIA-782C data were used to calculate levels of concentration in each State. Three measures of concentration were computed: the market share of the four largest

companies in each of the 48 contiguous States and the District of Columbia, the top eight firms' market share, and the number of suppliers to each State.

Methodology

The analysis focused on two hypotheses: first, that States with higher levels of concentration had higher prices; and second, during periods of market decline, prices did not fall as far in States with higher concentration levels (conversely, that during periods of market strength, prices rose farther in more highly concentrated States). To evaluate these hypotheses, PMD tested the following using ordinary least squares regression methods:

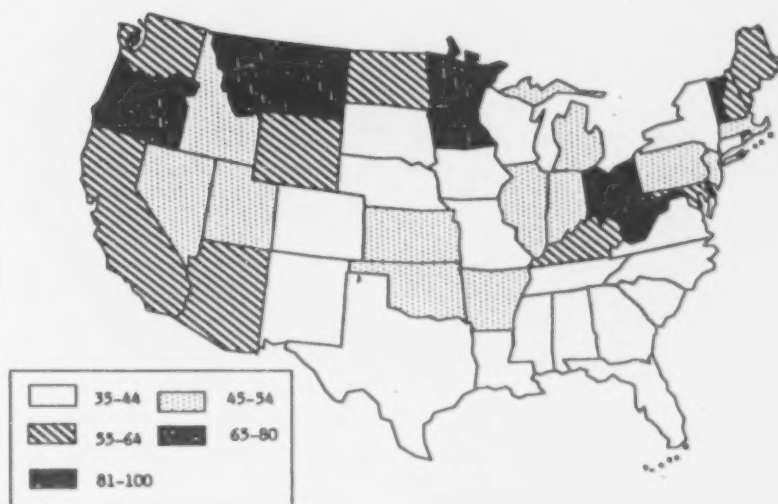
- Three equations comprising regressions of the average of the absolute price levels for January, March, July, and December for each State on each of three measures of concentration: four- and eight-firm concentration levels, and the number of suppliers per State.
- Nine equations expressing the percentage change in price during each of the three time periods (January to March, March to July, July to December) as a function of the three measures of concentration.
- The effects of regional variations in prices on the coefficients in the equations.

(Refer to the box for the general forms of the equations.)

Table F1 shows the market share of the top four and the top eight companies, the number of suppliers, and the total sales volume in each State for gasoline. PMD chose to examine concentration in motor gasoline markets due to its prominence in the total U.S. energy market compared to other petroleum products. Heating oil is highly seasonal and sales are regionally dependent (i.e., the major heating oil markets are located in the Northeast and Midwest). Residual fuel, although the most highly concentrated of the products, is not a fuel that the typical consumer would purchase. Additionally, sales of motor gasoline greatly exceed sales of diesel fuel. Figure F1 shows the distribution of the top four companies' market share for gasoline across the United States in 1983.

PMD collects wholesale and retail data from all refiners and gas plant operators. Because the retail data reported includes only company-operated outlets and bulk retail sales, PMD's coverage of wholesale markets is more complete. Further, trends in gasoline prices usually are observed first in the wholesale markets. Movements in wholesale prices usually lead to move-

Figure F1. Motor Gasoline Market Shares for Top 4 Companies by State, 1983



ments in retail prices. Therefore, we narrowed our analysis to the wholesale market.

Extreme volatility in petroleum product prices occurred in 1983. It was also the first year that PMD collected State-level price and sales volume data for most of the major products. We conjectured that, if concentration levels actually affected consumers, it should be evident in price movements during 1983.

PMD divided the year into three time periods based on price trends in the U.S. aggregate wholesale price level (see Figure F2). Wholesale gasoline prices declined in all States during the early part of 1983 (January to March). As demand picked up in the spring, prices recovered and increased in all States from March to July. Prices then dropped sharply in the fall, reaching levels by December that were well below those existing at the beginning of the year.

Inspection of the data indicated that States in the same region tended to have prices that performed similarly, but differently from other regions. Possible causes of different inter-regional price behavior included differences in transportation costs from refining centers, and regional inflation and unemployment. In order to better test the correlation between price and concen-

tration, price variations due to these factors were removed. This was accomplished statistically by including "dummy" variables in the regression equations, which took on the value of 1.0 for States in a given regional group, and zero elsewhere. If the regression produced a statistically significant, non-zero coefficient for a dummy variable, then we could not conclude that factors other than seller concentration (in this case) had no effect on the variation in prices or price changes. The dummy variables removed some of the influence of these factors on the concentration variable, and, thus, allowed a more meaningful and precise measurement of the strength of the relationship between concentration levels and price.

Our initial geographic subdivision of the country was the five Petroleum Administration for Defense Districts (PADDs). (Refer to the Glossary for definitions of PADDs.) Since PADDs were so large, Federal Regions were used to further subdivide the country into smaller and possibly more homogeneous areas. (Refer to the box on Federal Regions for definitions.) Alaska and Hawaii were excluded from this study due to their dissimilarity with markets in the continental United States. The geographic isolation of Alaska and Hawaii tends



Chevron U.S.A. Inc.
P. O. Box 1706, Atlanta, GA 30301

ATTACHMENT 2

February 12, 1986

Dear Chevron Jobbers:

It has recently come to our attention that some Chevron jobbers have been soliciting the sale of, or have in fact sold, Chevron products to Chevron dealers who have direct Supply Contracts with Chevron. The purpose of this letter is simply to remind all Chevron branded jobbers that the occurrence of such activity may jeopardize the jobber's relationship with Chevron.

While Chevron dealers may purchase non-Chevron motor fuels from others (subject to the dealer fulfilling his obligations under his Supply Contract with Chevron continuously to offer for sale all grades of Chevron motor fuels), Chevron's Supply Contracts with both its two-party and three-party dealers require that the dealer purchase from Chevron all Chevron motor fuels necessary to serve demand for Chevron motor fuels at the dealer's station. Hence, any purchase of Chevron motor fuels by any direct supplied Chevron dealer from a Chevron jobber is a breach of the dealer's Supply Contract with Chevron.

Any sale by a jobber of Chevron motor fuels to any Chevron dealer who is now a party to a Supply Contract with Chevron constitutes a wrongful interference by the jobber with Chevron's contracts with those dealers, and may result in termination of the jobber agreement with Chevron. The Branded Jobber Petroleum Products Agreement permits termination by Chevron if "jobber knowingly induces the breach by a third party of a contract between Chevron and the third party."

If you have any questions whether any particular service station selling Chevron gasolines has a direct Supply Contract with Chevron, please contact me.

Very truly yours,

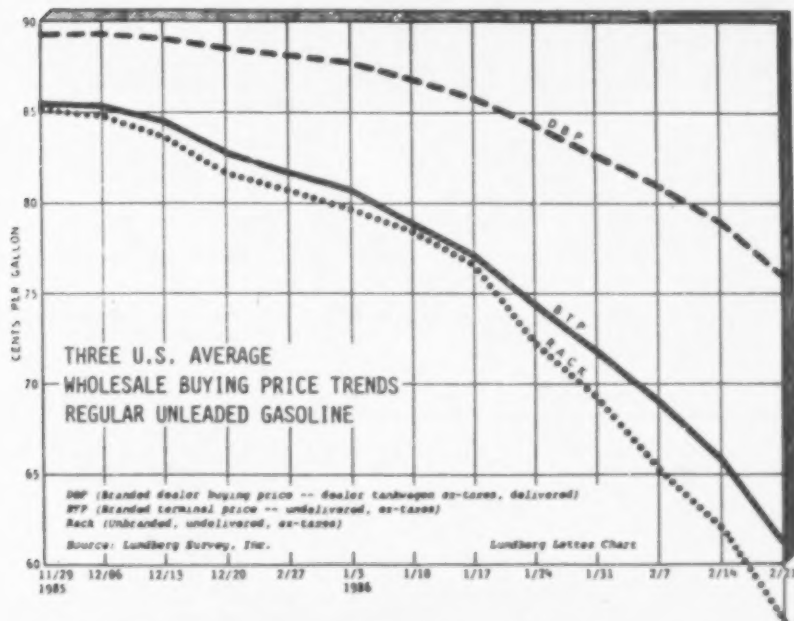
CHEVRON U.S.A. INC.

By: 

S. P. WILLIAMS
Wholesale Manager

Typhoid Mary Comes A-Knocking

FALLING PRICES BEDEVIL WHOLESALE GASOLINE PRICE COMPETITION

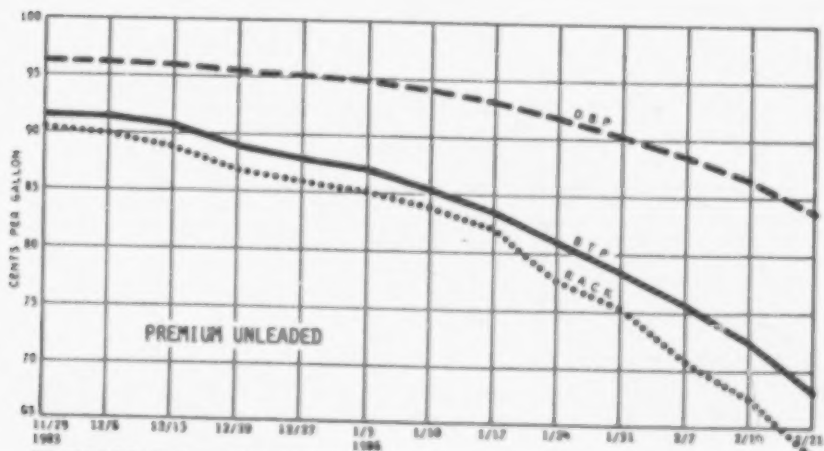
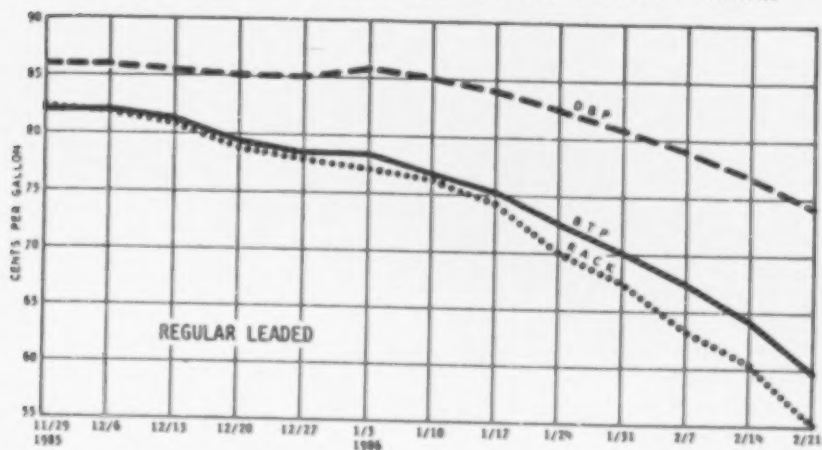


THE DOWNWARD crude and refined product price trend is benefitting consumers with many retail regular leaded and even unleaded gasoline prices below the \$1 gal. mark. But beneath that exterior lies a threat to many traditional retail marketers' survival, as uneven wholesale price cut occurrences meet with uneven retail business costs. Result: Consumers can pocket the benefit in many locations in the short term, but might suffer the disappearance of retail gasoline outlets and automotive services in the future.

Tracy Lundberg, Editor; Dan Lundberg, APN Publisher
Contributing Editors: John Ayling, Mark Ennsel, Jan C. Lundberg, Graham, Ohio State Business Manager; Nels B. Shuman, Production; Craig P. Hagan

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THREE U.S. AVERAGE WHOLESALE BUYING PRICES OVER THREE MONTHS



OSP (Wholesale dealer buying price -- Dealer discounts as-taken, delivered)

BTP (Wholesale terminal price -- undelivered, as-taken)

BACB (Unbranded, undelivered, as-taken)

Source: Lundberg Survey, Inc.

Lundberg Letter Chart

Dealers sue Texaco over rack-DTW spread

Texaco dealers claim they were told they could "turn in the keys" to their stations if they continued trying to cash in on an 18c differential between Texaco rack and DTW prices by buying from Texaco jobbers.

In an antitrust suit just filed in Texas, the dealers say they were buying product from Texaco jobbers for 11c under Texaco DTW prices when Texaco found out and told the jobbers to stop supplying them.

Texaco denies the claims. It lets dealers buy from Texaco jobbers as long as the product's sold under the Texaco flag, says an official.

Texas Attorney-General Jim Mattox says he'll investigate dealer claims that majors are "manipulating" prices by cutting jobber racks so they can dump excess product in rural markets, while keeping DTW numbers "artificially high" to protect profitable metro markets.

"Dealers are playing a game -- they're just trying to push their market along a bit faster. You don't hear any gripes in a rising market when jobber margins almost disappear," says one refiner.

Meantime, Connecticut plans a similar probe after consumer group complaints over high pump prices.

as rack-DTW price gap widens

Dealers shop for spot market gasoline

Pressure on major oil companies to cut DTW prices is increasing as dealers buy from branded jobbers and shop the spot market for cheaper supply.

"We've bought spot market product for our members for the last three weeks," says Texas dealer exec, Bill Ligon. "We can get it for 15-16c under DTW prices from branded jobbers. We've bought 500,000 gallons so far."

Because of the spot shopping spree by dealers from the Gulf to East Coast, majors are cracking down. They're threatening to terminate dealers running even if they run correctly branded 'gas' through their pumps if the product wasn't direct-delivered 'gas,' some dealers claim.

"As long as dealers do it the right way, there's nothing majors can do about it," says Ligon. He tells his 1,000 plus dealer members to debrand pumps if they sell unbranded product, and to remember to buy at least 50% of their 'gas' from their major supplier.

Though Chevron-Gulf cut DTW 10c last week and majors like Amoco, Chevron and Mobil fell 5-10c, the cuts aren't deep enough, say dealers staring at near-30c jobber-DTW spreads in some markets.

A random survey by Oil Price Information Service has average jobber-DTW spreads looking like this last week:

Amoco	13.76c gal	Sohio-Gulf	25.48c
Chevron	17.23c gal	Marathon	15.56c
Exxon	17.73c gal	Mobil	22.97c
Getty	24.75c gal	Sunoco	24.35c

Amoco seems to be at the low end of the scale because its jobber prices in some markets are several cents over other racks. But its home-town prices in Chicago where it's more competitive show a near-20c differential between jobber and DTW no-lead prices.

• For a glimpse of jobber-DTW spreads by brand, see charts at the side of this page.

following figures, from Oil Price Information Service, show the jobber rack-DTW spreads as of midweek last week at randomly-selected terminals. Prices shown are for unleaded gasoline and do not include dealer rebates or incentives, which would cut spreads perhaps by a cent or so.

Amoco	Rack	DTW
Atlanta	58.31	70.00
Baltimore	73.75	81.10
Miami	71.57	79.50
Chicago	52.27	72.80
Detroit	49.79	71.10

Chevron	Rack	DTW
Atlanta	49.10	66.20
Boston	54.35	70.90
Miami	54.05	76.10
Denver	49.99	53.80
L.A.	60.00	70.50
Newark	48.70	73.40

Sohio/Gulf	Rack	DTW
Atlanta	52.37	71.5
Miami	57.32	79.8
Baltimore	58.70	85.0
Boston	51.82	85.0
Columbus, Oh.	48.21	74.1

Mobil	Rack	DTW
Atlanta	51.57	69.60
Boston	55.63	76.90
Newark	50.88	81.00
Phila	51.08	75.00
Chicago	48.21	71.00
Detroit	48.75	71.90

Sun	Rack	DTW
Baltimore	59.00	82.70
Boston	58.11	82.00
Newark	54.10	83.30
Phila	55.29	78.10
Chicago	48.41	71.00
Detroit	49.15	73.05

Marathon	Rack	DTW
Chicago	46.75	63.6
Columbus, Oh.	48.20	61.9
Detroit	48.00	65.5
Indianapolis	46.00	60.2

Getty	Rack	DTW
Boston	52.96	79.00
New Haven	56.23	80.82
Newark	49.69	81.13
Phila	50.63	75.60

as dealers file antitrust suit against majors

Dealer-jobber price gap still yawns wide

Majors are slashing DTW numbers in big chunks as they feel the heat from dealers over the still-huge gap between jobber rack and DTW prices, but they're not cutting fast or deep enough say retailers.

Though some majors cut DTWs as much as 8cts last week, a random survey shows the average rack-DTW gap still running 13.62cts to 26.45cts (see chart below). In our survey of the same majors' prices two weeks ago, the spread was 13.76cts to 25.48cts (OE 3/3).

Chevron-Gulf registered the largest DTW drop, the average differential falling from 17.23cts two weeks ago to 15.62cts this week. It now has some of the lowest DTWs in the East, with many cities below 60cts gal. (For moves by individual refiners, see charts at side of page).

Generally, the East Coast had the widest gaps, with spreads of over 30cts, notably BP in Baltimore and Boston, Sun and Mobil in Newark. Spreads narrow to 10cts in the Rockies, 15cts on the West Coast. According to Oil Price Information Service, average spreads look like this:

Company	Rack-DTW gap	Spread on 3/3
Amoco	13.62cts	13.76cts
Chevron	15.62cts	17.23cts
Getty	25.98cts	24.75cts
Sohio/Gulf/BP	26.45cts	25.48cts
Marathon	15.06cts	15.56cts
Mobil	23.45cts	22.97cts
Sunoco	26.15cts	24.35cts

Meantime, dealers continue to fight for lower DTWs:

• In Texas, 16 dealers were to file an anti-trust suit in U.S. District Court at presstime against Mobil, Exxon, Texaco, Chevron-Gulf and Shell claiming price-fixing and violations of the RICO Act. The dealers raised \$25,000 in two days to finance the suit, being filed on behalf of all Texas retailers. As disclosed 3/10, Texaco dealer L.J. Doucet reached an out-of-court settlement over his case against Texaco after Texaco agreed to let him buy at jobber rack price for 45 days. Other state dealers were not happy with the settlement, hence this new suit.

• In Alabama, Chevron dealers were to meet with lawyers late last week to discuss a suit against all majors operating in the state. Meantime, after Chevron retailers rebelled last week, top pricing managers in the state flew to California to huddle with Chevron brass. One dealer says he's heard hints of an entirely new pricing system that might be offered to dealers. Though Chevron narrowed its rack-DTW spread from 22cts to 13.6cts in the state last week, dealers still claim losses.

• In Georgia, dealers who sued six majors for breach of a state below-cost sales law were regrouping late last week after a county judge found the law unconstitutional. Options under consideration: Appeal of the county judge's ruling, a new suit in another county, and/or a U.S. court action. Some dealers have lost 50% of their volume to jobbers, with one jobber showing street prices 2cts-6cts below a lessee dealer station just 700 feet away.

Following prices, from Oil Price Information Service, show jobber rack-DTW spreads last week at randomly selected terminals. Prices are for unleaded gasoline and don't include rebates or incentives which would cut spreads a cent or so.

Amoco	Rack	DTW
Atlanta	48.5	61.0
Baltimore	67.6	82.0
Miami	60.5	69.2
Chicago	46.0	60.5
Detroit	41.6	59.6

Chevron	Rack	DTW
Atlanta	40.7	54.2
Boston	45.45	63.9
Miami	43.8	65.1
Denver	42.0	50.2
L.Angelos	50.0	64.5
Newark	41.1	58.4

Sohio/Gulf	Rack	DTW
Atlanta	43.2	60.5
Miami	48.0	72.5
Baltimore	45.05	82.0
Boston	44.2	76.5
Columbus Oh.	41.0	64.4

Mobil	Rack	DTW
Atlanta	41.7	61.6
Boston	47.0	71.0
Newark	41.7	72.3
Philadelphia	43.1	67.0
Chicago	40.3	62.6
Detroit	39.45	59.1

Sunoco	Rack	DTW
Baltimore	47.4	76.7
Boston	50.45	74.0
Newark	47.20	77.3
Philadelphia	45.70	71.1
Chicago	42.20	66.0
Detroit	41.25	66.0

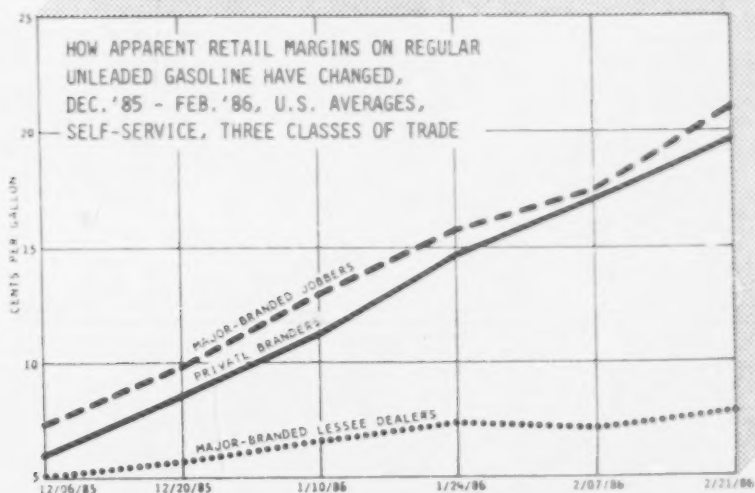
Marathon	Rack	DTW
Chicago	40.0	53.6
Columbus, Oh.	41.3	56.5
Detroit	39.3	54.4
Indpolis	39.95	46.3

Getty	Rack	DTW
Boston	46.3	69.0
New Haven	46.2	72.82
Newark	42.75	74.13
Philadelphia	43.0	65.60

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Saved By The Bell

Retail Gasoline Margins Stratified



Source: Lundberg Survey, Inc.

Lundberg Letter Chart

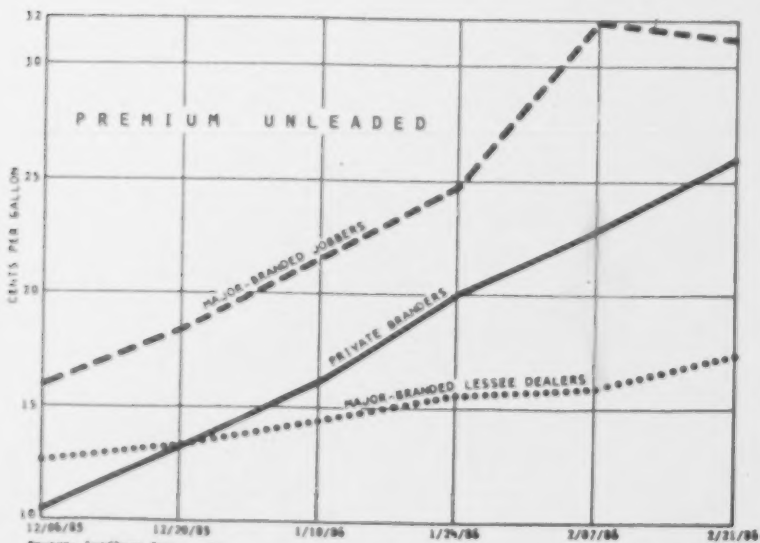
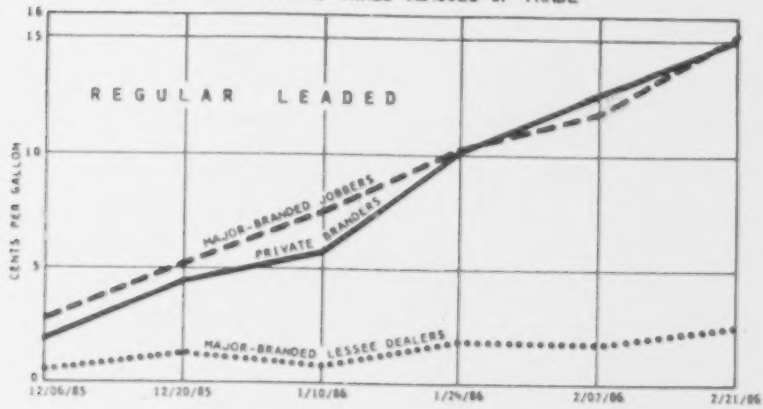
Note: For these calculations, wholesale prices to jobbers and private branders are freight-adjusted; margins for these two classes of trade are terminal-to-retail.

FALLING RETAIL GASOLINE prices are making most people happy these days, as lower crude oil acquisition costs continue to work their way through the refining and distribution systems. Unhappy marketers are those with smaller cuts to pass through than does local competition. A close look at how margins are faring by class of trade yields some hints about what to expect of gasoline price competition during the 1986 summer driving season.

Tracy Lundberg, Editor; Dan Lundberg, APR, Publisher
Contributing Editors: John Ayling, Mark Emond, Jan C. Lundberg, Graphics; Chu Shien, Business Manager; Nelsa B. Shelton, Production; Craig P. Hooten

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Mailing address: P.O. Box 2896, North Hollywood, California 91606-0896, U.S.A. Telephone (818) 700-5111 Telex: 1 915 489-2738

U.S. AVERAGE APPARENT RETAIL MARGINS, DEC. '85 - FEB. '86
SELF-SERVICE, THREE CLASSES OF TRADE



Source: Lundberg Survey, Inc.

Note: For these calculations, wholesale prices to jobbers and private branders are freight-adjusted; margins for these two classes of trade are terminal-to-retail.

Lundberg Letter Chart

THE GREAT GASOLINE STICK-UP

How the Major Oil Companies
Cheated American Motorists Out of \$1 Billion
in the First Three Months of 1986

A Research Report
by the
Citizen/Labor Energy Coalition

April, 1986

FINDINGS

According to oil industry and government data analyzed by C/LEC:

- * During the first three months of 1986, as oil prices were tumbling worldwide, the major U.S. oil companies used their market power to deprive American motorists of \$1 billion in lower gasoline prices.
- * The eight largest U.S. oil companies control over 56 percent of the nation's refinery capacity and over 52 percent of gasoline sales nationwide. These percentages are much higher in specific markets, cities, states and regions.
- * Nationally, Chevron, Exxon, Shell, Amoco, Texaco, Mobil, Arco and U.S. Steel's Marathon Oil had 56.1 percent of refining capacity in 1984. Similarly, Chevron, Amoco, Texaco, Shell, Exxon, Mobil, Arco and Unocal sold 52.1 percent of the nation's gasoline in 1984.
- * The concentration of control over wholesale gasoline sales by the eight largest companies in many states is substantial. In the District of Columbia the 8-largest companies supply 100% of the market. In Pennsylvania 84 percent. In Maryland 84 percent. In California, 82 percent.
- * In 1984 in Washington, D.C. four companies -- Amoco, Exxon, Shell and Texaco had 58% of the retail gasoline market. Arco, Exxon, Gulf and Mobil had 59 percent of the retail gasoline market in Philadelphia. Gulf, Exxon, Shell and Texaco had 54% of the gasoline market in Houston.
- * In states and cities where the eight largest companies have the lion's share of the gasoline market, retail prices lagged far behind wholesale prices. In contrast, in cities and states where the 8-largest companies have a small share of the market, retail prices closely tracked wholesale prices.
- * The major oil companies boosted retail prices by charging their own gasoline dealers prices as much as 30 cents per gallon more than they were charging other customers at their refineries. The normal difference in price is 5 cents to 7 cents per gallon. In response dealers in many states are suing their major oil company suppliers for price discrimination.

- In the cities of Washington, D.C., New York, Chicago, Boston, Philadelphia, Los Angeles and Miami, wholesale prices fell 35 to 40 cents per gallon between December and the end of March, while retail prices only dropped 10 to 25 cents per gallon.
- During February and March the nation's refiners sharply cut back refinery operations from over 80 percent capacity utilization in January to 77 percent during February and to 75 percent during March. As a result refiners have reduced gasoline production by 500,000 barrels per day during March and have reduced gasoline inventories by over 19 million barrels since the end of February. In response, wholesale gasoline prices are rising, despite lower crude oil costs.
- By reducing gasoline production and inventories, U.S. refiners are acting together to help prop up gasoline prices and thereby support crude oil prices. If gasoline stocks continue to decline or stabilize at too low a level for the demands of the upcoming driving season, consumers, particularly those on the East Coast and other markets dominated by the major oil companies, can expect higher prices--5 cents or more per gallon-- at the gasoline pumps this summer.

Introduction

Sometime in late August or early September 1985, the four American oil company partners (Exxon, Mobil, Texaco and Chevron) in the Aramco consortium that purchases most of Saudi Arabia's oil, urged the Saudis to "assist" them in taking more oil. (See *Petroleum Intelligence Weekly*, September 9, 1985.) In September 1985 Saudi Arabia initiated negotiations with Exxon, Mobil and Texaco (to be joined later by Chevron), for increased sales of crude oil. Under a new "netback" pricing scheme, devised in cooperation with the companies, Saudi Arabia was able to raise its output from less than 2.3 million barrels a day to 4.5 million barrels a day within a few short months.

While the netback pricing scheme enabled the Saudis to dramatically increase their production, it also guaranteed the oil companies a profit, on every barrel purchased -- a very important consideration in a glutted, volatile and increasingly competitive market. Because the price of crude oil is determined only after it arrives at a refinery and is based on the prevailing prices for petroleum products, the refiner has a very strong incentive to process the crude as quickly as possible.

As netback deals began to proliferate among companies and OPEC countries, output at U.S. oil refineries began to increase. According to the highly respected *Petroleum Intelligence Weekly*, "netback deals seem to be promoting continuance of rapid processing and sale of products, tending to accelerate, rather than halt, the downward price spiral..." (February 17, 1986)

The collapse in oil prices was reflected as much in the markets for crude oil as in the markets for oil products, especially gasoline. As refiners boosted their operations to accomodate net back crude oil purchases, they produced large quantities of gasoline. As a result, prices for wholesale gasoline began to tumble in January. The large volume of gasoline available, the continuing surplus and decline in crude oil prices led to increasing competition in the wholesale price of gasoline. The New York spot market price fell from 71 cents per gallon in late December to 41 cents in early March. Based on this 30 cents per gallon drop at wholesale, retail prices should have followed.

Surprisingly, in most parts of the country, motorists did not see a sharp drop in retail gasoline prices. The reasons why have nothing to do with differences in the cost of refining, transporting or distributing gasoline, but rather to the lack of effective competition in many major markets. In short, the nation's largest oil companies used their substantial economic power to nullify the competitive process and thereby deny millions of American gasoline consumers the lower prices available in markets where competition exists.

SECTION IRetail Prices Fail to Track Wholesale Prices In Key Markets

In order to understand how the major oil companies prevented the passthrough to consumers of lower retail gasoline prices, it is necessary to understand how gasoline is sold and priced; the competitiveness or lack of competitiveness in various markets; and what the actual gasoline pricing data show.

Wholesale Gasoline Pricing

While refiners have numerous gasoline pricing strategies, the major integrated oil companies historically have had two wholesale prices -- the rack price, the price charged at the refinery to large distributors or jobbers, and the DTW (Dealer Tankwagon) price, the price charged to lessee dealers for gasoline delivered to their branded gasoline stations. According to a recent Department of Energy report,

Major refiners for years used a dual delivered-pricing policy. DTW for lessee dealers supplied directly by the refiner and functional discounts off of the DTW for jobbers. The DTW, a delivered price, was the highest wholesale price in the marketplace. It included all costs to the terminal plus transportation to the dealer and most other marketing costs, such as items for maintaining the brand (advertising, for example), credit cards, overhead (headquarters and field supervision costs), storage, part of outlet maintenance, and some portion of the rent. The retail price the lessee dealer charged was something above this DTW price, producing a dealer margin...

The branded jobber's price was pegged to the DTW. Since DTW was a delivered price, the jobber's price could be considered a delivered price. The jobber's price was DTW

less the functional discount [Usually 3.5 to 4 cents/gallon was given to jobbers to compensate them for their wholesaling and marketing services.], less hauling allowances if the jobber transported the product from the terminal to the jobber's bulk plants, less discounts for prompt payment. Jobber margins (the difference between DTW and the jobber's ultimate buying price) averaged 3 cents/gallon but in many instances were even higher... ("Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers," Draft, U.S. Department of Energy, March 1984, p. 39.)

In other words, under normal market conditions, an observer would expect to see a difference of 5, 6 or maybe 7 cents per gallon between the Rack price and the DTW price. Until the end of December 1985, before the sharp drop in price, these differences existed in almost every gasoline market in the country. During the January - March period, however, refiners in many U.S. gasoline markets increased the price differential to as much as 35 cents per gallon.

According to a paper published by the American Petroleum Institute, the DTW price represents "most wholesale level transactions for gasoline" and that changes in retail prices are dependent on changes in DTW prices. ("Linkages and Movements in Petroleum Prices from the Wellhead to the Consumer," John L. Osninski, American Petroleum Institute, February 26, 1986.) This means that DTW prices effectively determine retail prices. If DTW prices fall, retail prices fall. If DTW prices rise, retail prices rise. "If wholesalers, as a group, raise the price they charge for their services, retailers will generally be unable to turn to other sources of supply, since others are not immediately positioned to provide these services." ("Mergers in the Petroleum Industry," Federal Trade Commission, September 1982, p. 248.) In short, by controlling DTW prices, major oil companies control retail prices for their branded gasoline.

"Oil prices have been tumbling since December without corresponding moves at the pump. Refiners attribute that to the normal lag in delivery and processing of the cheaper crude. But market experts consider it plain old stalling." (Business Week, March 10, 1986, p. 30.) Contrary to major oil company assertions that the lags in passing through lower gasoline prices were "normal," the delays were in fact deliberate efforts to extract more money from motorists during a period of rapid price decline. During January - March, major U.S. oil refiners used their market power in many parts of the country to maintain very high DTW prices, which in turn forced their branded gasoline dealers to charge high retail prices to gasoline consumers. At the same time, refiners reduced their wholesale rack prices, which enabled non-branded gasoline suppliers to pass on savings to consumers.

Branded gasoline station owners across the country were outraged. Their refiners were not only overcharging consumers, but were depriving their own dealers of the ability to compete in the marketplace. According to one industry trade publication,

Dealers say their suppliers' DTW prices are discriminatory, and they're going to court to prove it. Eyeing 18cts-30cts spreads between jobber and dealer prices in the same market, they're mounting aggressive press and legal campaigns to force majors to cut DTW prices.

And, at least in Texas, they've met some success. There, Texaco was last week forced to deliver gasoline to a Bridge City dealer at rack price, plus tax, after the retailer won a temporary restraining order against Texaco for alleged price discrimination.

But, majors are fighting back. Chevron is threatening to terminate jobbers who sell gasoline to direct-supplied dealers, while Sun and Mobil are warning of contract cancellations if dealers commingle by buying unbranded 'gas' from jobbers at 25-30cts under DTW prices. (Oil Express, March 10, 1986)

Testifying to the effort by major oil companies to use their market power to maintain retail gasoline prices above competitive levels, branded dealers are taking legal and other action. The states where dealers are taking action include: Texas, Alabama, Connecticut, Georgia, South Carolina, Arkansas, and California.

Competition and Oligopoly

In markets that are competitive, there are a sufficient number of firms such that no one firm or no group of firms can effectively limit supply or determine prices. According to the Federal Trade Commission, "one significant piece of evidence bearing on the likelihood of exercising market power in local or regional markets is the level and trend of concentration...Company documents over the past 10 years include studies of the relationship between prices and concentration or share of independents." (Ibid. p. 250.) Furthermore, "These studies frequently find that higher prices are associated with higher concentration levels and a lower share for independents. Major firms' profit margins also appear to be positively correlated with increased concentration and inversely correlated with the aggregate market share of independents." (Ibid. pp. 256.)

The FTC's Merger report, in addition to providing data on company by company shares of gasoline market (see below), found that the major companies themselves are acutely aware of the role played by independent competitors and in which markets those competitors are most effective.

The effects of competition from independents appear to vary from place to place. One major company noted that, over a given time period, private brand impact varied noticeably depending upon the local availability of unbranded rack wholesale supplies:

[T]he Independents are a powerful marketing force in the Mid-Continent area where ample product supply is available from Gulf Coast and Mid-Continent refiners. From there the Independents' market share progressively drops to the less-than-20% levels found on the West Coast

andin the North Atlantic states where product supplies for Independents are less available.

In the Northeast region of the United States, internal documents of a major oil company discussed the minimal impact of independent marketers, because of limited supplies:

The independents have the least market share and the poorest supply system on the East Coast, particularly in the Northeast. There are very few independent refineries, and the mini-majors, who tradition ally supply the independent markets, are poorly represented on the East Coast, although they do obtain products by exchange.

The existence of independent refinere, wholesalers and dealers in the Midwest and West has provided the competitive pressure to enable some U.S. motorists to benefit from the recent sharp decline in crude oil and wholesale gasoline prices. Most Americans have not been so lucky.

The tables below demonstrate that at both the wholesale and retail levels, the nation's eight largest oil companies have substantial market power. Most of it is concentrated in the Northeast, the East Coast, parts of the Midwest and West Coast. Their weakest marketing positions are in the Southwest, West and parts of the Midwest.

The lack of competition in the markets where the largest oil companies are dominant is the most reasonable explanation of why retail prices in those same markets lagged far behind retail prices in markets where the majors are either weak or not a dominant force.

Table I

MAJOR OIL COMPANY SHARES OF RETAIL GASOLINE SALES
IN CERTAIN METROPOLITAN AREAS - 1983-84

CITY	COMPANIES											4-7
	CHEVRON	AMOCO	TEXACO	SHELL	EXXON	MOBIL	ARCO	COKOCO	SUN	PHILLIPS	CITGO	
BOSTON				7%		12%	10%		10%			1
CAMDEN, NJ			8%		9%	9%						2
PHILADELPHIA		8%			10%		24%					3
WASHINGTON, DC		19%	7%	13%	19%		22%		13%			4
MIAMI	14%	18%		12%								5
CHICAGO		22%		15%								6
DENVER		14%	9%				12%					7
HOUSTON	20%		8%	10%	16%				7%	9%		8

Source: National Petroleum News Factbook, 1984.

Table II

**Finished Gasoline Measures
of Concentration and
Sales Volumes
(Percent)**

	Finished Gasoline			
	Top 4 Com- panies	Top 8 Com- panies	No. of Suppliers	Sales Volumes
Alabama	33	57	35	1,686,435
Arizona	58	87	30	1,344,880
Arkansas	47	87	41	1,078,886
California	37	82	35	11,104,560
Colorado	43	69	36	1,412,334
Connecticut	47	78	23	1,164,684
Delaware	82	94	17	346,540
District of Columbia	88	100	13	153,954
Florida	36	59	36	4,984,436
Georgia	38	62	38	2,739,719
Idaho	52	85	20	442,500
Illinois	52	74	37	4,039,990
Indiana	52	72	36	2,332,423
Iowa	41	67	37	1,317,484
Kansas	50	73	39	1,807,839
Kentucky	59	80	40	1,845,337
Louisiana	43	68	41	2,145,388
Maine	57	89	13	556,577
Maryland	57	84	25	1,787,532
Massachusetts	48	73	23	2,132,582
Michigan	51	73	33	3,889,580
Minnesota	65	82	30	2,377,242
Mississippi	36	62	36	1,240,017
Missouri	39	61	42	2,204,097
Montana	66	90	21	490,846
Nebraska	41	66	33	739,083
Nevada	54	81	22	410,945
New Hampshire	57	81	17	216,254
New Jersey	46	73	28	4,256,470
New Mexico	50	78	33	790,892
New York	42	65	34	4,420,484
North Carolina	40	64	35	2,890,537
North Dakota	81	84	26	410,109
Ohio	67	86	32	4,274,537
Oklahoma	48	70	37	1,784,670
Oregon	68	86	21	1,236,488
Pennsylvania	32	64	34	4,806,736
Rhode Island	35	66	19	415,643
South Carolina	43	65	34	1,485,239
South Dakota	41	65	29	378,783
Tennessee	39	62	47	2,481,094
Texas	42	62	38	10,414,798
Utah	51	81	21	696,633
Vermont	77	94	16	112,310
Virginia	44	66	39	2,396,738
Washington	59	89	22	2,011,536
West Virginia	62	93	22	573,884
Wisconsin	41	68	35	1,888,817
Wyoming	59	84	24	3,021,600

Source: Energy Information Administration.

Table III

Four Largest Gasoline Suppliers And Their
Combined Market Share, By State, 1980
(based on first sale into the State)

<u>STATE</u>	<u>Four Largest Suppliers</u>	<u>CR-4</u> <u>(%)</u>
Alabama	Chevron, Shell, Gulf, Texaco	37.9%
Alaska	Chevron, Tesoro, Union, Texaco	98.9
Arizona	Shell, Chevron, Union, Exxon	37.4
Arkansas	Exxon, Sun, Texaco, Tosco	44.8
California	Chevron, Shell, Arco, Union	34.7
Colorado	Amoco, Asamera, Little America, Chevron	34.1
Connecticut	Mobil, Shell, Amerada Hess, Amoco	41.0
Delaware	Arco, Getty, Exxon, Texaco	34.1
D.C.	Amoco, Exxon, Gulf, Shell	77.9
Florida	Chevron, Amoco, Shell, Gulf	38.4
Georgia	Chevron, Gulf, Amoco, Exxon	42.3
Hawaii	Chevron, Union, Shell, Texaco	85.0
Idaho	Chevron, Little America, Phillips Conoco	48.3
Illinois	Amoco, Marathon, Shell, Phillips	50.3
Indiana	Marathon, Amoco, Shell, Rock Island	47.4
Iowa	Amoco, Sun, Phillips, Farmland	41.3
Kansas	Amoco, Derby, Farmland, Vickers	33.2
Kentucky	Ashland, Chevron, Marathon, Gulf	38.3
Louisiana	Exxon, Shell, Texaco, Gulf	47.2

Table III

Four Largest Gasoline Suppliers and their Combined Market Share (Continued)

Maine	Exxon, BP, Mobil, Gulf	52.1
Maryland	Exxon, Amoco, Shell, BP	50.1
Massachusetts	Mobil, BP, Texaco, Shell	43.8
Michigan	Marathon, Total, Shell, Mobil	42.6
Minnesota	Koch, Amoco, Ashland, Mobil	59.6
Mississippi	Chevron, Shell, Gulf, Amoco	41.1
Missouri	Amoco, Phillips, Shell, Mobil	32.5
Montana	Exxon, Conoco, Cenex, Amoco	56.3
Nebraska	Amoco, Phillips, Farmland, Mobil	44.3
Nevada	Tosco, Chevron, Shell, Union	34.7
New Hampshire	BP, Mobil, Texaco, Exxon	33.3
New Jersey	Exxon, Amerada Hess, Mobil, Sun	40.2
New Mexico	Chevron, Shell, Texaco, Navajo	45.5
New York	Mobil, Exxon, Texaco, Amoco	41.0
North Carolina	Exxon, Gulf, Texaco, Amoco	45.9
North Dakota	Amoco, Cenex, Ashland, Mobil	65.5
Ohio	Boron, Marathon, Ashland, Shell	59.6
Oklahoma	Sun, Vickers, Texaco, Phillips	43.8
Oregon	Chevron, Arco, Shell, Texaco	59.6
Pennsylvania	Arco, Exxon, Mobil, BP	43.8
Rhode Island	Mobil, Arco, Shell, Sun	47.6
South Carolina	Exxon, Gulf, Shell, Amoco	45.8

Table III

Four Largest Gasoline Suppliers and their Combined Market Share (Continued)

South Dakota	Amoco, Mobil, Farmland, Cenex	92.3
Tennessee	Exxon, Amoco, Gulf, Shell	41.0
Texas	Exxon, Gulf, Texaco, Diamond Shamrock	39.8
Utah	Little America, Chevron, Amoco Western Rig.	48.8
Vermont	Mobil, Exxon, Texaco, Gulf	51.1
Virginia	Exxon, Gulf, Texaco, Amoco	42.7
Washington	Chevron, Arco, Texaco, Shell	55.4
West Virginia	Exxon, Ashland, Gulf, Amoco	65.8
Wisconsin	Amoco, Marathon, Mobil, Ashland	38.3
Wyoming	Little America, Amoco, Conoco Husky of Del.	55.1

Source: Dep't of Energy, Form EIA - 23, "Prime Supplier Report" (1980).

TABLE IV
U.S. REFINERY CAPACITY, 1984^{1/}
 (000 Bbls/day)

<u>Company</u>	<u>Capacity</u>	<u>Percent of Total Capacity</u>
Chevron (Std. of California) ^{2/}	2,029.3	14.0
Exxon	1,182.0	8.2
Shell	1,005.0	6.9
Standard of Indiana	986.0	6.8
Texaco	939.0	6.5
Mobil	750.0	5.2
Atlantic Richfield	741.0	5.1
U.S. Steel	492.5	3.4
Standard of Ohio	456.0	3.1
Sun	443.0 ^{4/}	3.1
DuPont	429.8	3.0
Ashland	353.3	2.4
Unocal	339.0	2.3
Phillips	300.0	2.1
Southland	297.0	2.1
Koch	262.0	1.8
Union Pacific	217.0	1.5
Coastal	171.3	1.2
Kerr-McGee	164.8	1.1
Tosco	164.5	1.1
American Petrofina	150.0	1.0
Total	144.5	1.0
Tenneco	133.0	0.9
Earl Holding ^{5/}	127.5	0.9
Diamond Shamrock	126.0	0.9
Agway	119.6	0.8
Murphy Oil	117.0	0.8
MAPCO	106.5	0.7
APEX	104.5	0.7
Crown Central	100.0	0.7
U.S. & Puerto Rico Total	14,481.6	100.0
Top 4	5,202.3	35.9 ^{6/}
8	8,124.8	56.1
15	10,742.9	74.2
20	11,722.5	81.0
30	12,951.1	89.4

Source: American Petroleum Institute.

TABLE V

U.S. MOTOR GASOLINE SALES, 1984^{1/}
(000,000 gals.)

<u>Company</u>	<u>Sales</u>	<u>Percent of National Market</u>
Chevron (Standard of California) ^{2/}	10,396.1	9.9
Standard of Indiana	7,714.5	7.3
Texaco ^{3/}	7,693.7	7.3
Shell	7,252.6	6.9
Exxon	7,112.7	6.8
Mobil	5,786.5	5.5
Atlantic Richfield	5,085.6	4.8
Unocal	3,687.0	3.5
Phillips	2,902.5	2.8
U.S. Steel	2,733.3	2.6
Sun	2,654.8	2.5
Southland	2,422.8	2.3
DuPont	2,053.6	2.0
Standard of Ohio ^{4/}	1,955.2	1.9
Ashland	1,662.8	1.6
Tosco	1,166.0	1.1
Diamond Shamrock	1,005.6	1.0
American Petrofina	990.6	0.9
Tenneco	793.3	0.8
Total	734.3	0.7
Kerr-McGee ^{5/}	731.2	0.7
APEX	706.2	0.7
Amerada Hess	638.8	0.6
Murphy	595.7	0.6
Thrifty Oil ^{6/}	526.9	0.5
Coastal ^{7/}	526.1	0.5
Union Pacific ^{8/}	505.1	0.5
Crown Central	461.1	0.4
Little America (Earl Holding) ^{9/}	333.1	0.3
Cenex	328.3	0.3
U.S. Total	105,066.5	100.0
Top 4	33,056.9	31.5 ^{10/}
8	54,728.7	52.1
15	71,113.7	67.7
20	75,803.5	72.1
30	81,156.0	77.2

Source: American Petroleum Institute.

Actual Gasoline Pricing Data

The tables below track rack, DTW and retail unleaded regular gasoline prices in a number of U.S. markets. Between December 4 and March 26, wholesale rack prices dropped by 35 to 40 cents per gallon across the country. Over the same period the retail price of gasoline fell by only 23 to 27 cents per gallon, a difference of 12 to 13 cents per gallon. What accounts for this disparity? And who kept the difference? And how much did this cost American motorists?

Table VI shows that in the 11 cities with the highest reported retail unleaded regular gasoline prices for the week ending March 19, the price decline from December 13 averaged 16 cents per gallon, while in the 11 cities with the lowest reported prices for unleaded regular gasoline, prices declined by nearly 35 cents per gallon -- more than twice the drop in the most expensive cities. These prices are exclusive of federal, state and local taxes. Because the disparity is so great, there must exist an explanation other than cost factors. The last two columns in the table show the 4-firm and 8-firm concentration levels for wholesale gasoline sales within the states in which the reported cities are located. These data are used, because there is no data set available that provides market share by city for all the cities reported. The concentration data show conclusively that in states with higher concentration, gasoline prices are higher than in states with lower concentration.

Tables VII through XIII and Charts I through V provide a detailed

look at wholesale rack, DTW and retail pricing changes in a number U.S. cities. What is clear in almost every case is that in markets where retail and DTW prices track wholesale rack prices, there is effective competition and in markets where retail and DTW prices remain significantly above wholesale rack prices, competition is limited.

Methodology Used To Calculate Gasoline Overpricing

Finally, Tables XIV and XV estimate the cost to consumers of major oil company gasoline overcharges. In the calculations it is assumed that the majors were able to keep retail prices above competitive levels by the difference between the normal 5 to 7 cents spread between rack and DTW prices and the actual spread which occurred from January to March. This figure is multiplied times the volume sold in the state for the first three months in 1986 multiplied times the top eight majors' share of the market and reduced by a factor of 25% to recognize the possibility that not all their gasoline in a state was overpriced. The report also assumes that the Rack/DTW spread during December was "normal," when in fact it was already somewhat larger than normal. Since all assumptions used in this report are very conservative, the actual amount of overpricing probably exceeds \$1.5 billion. For the 10 largest gasoline consuming states, the excess consumer cost amounts to \$764 million.

Table VI

GASOLINE PRICES IN SELECTED U. S. CITIES

Unleaded Gasoline

CITY	PRICE EX TAX 12-18-85	PRICE EX TAX 1-15-86	PRICE EX TAX 2-12-86*	PRICE EX TAX 3-19-86*	DIFF. 3 V 12	4-Co. State Mkt. Share	8-Co. State Mkt. Share
New York	97.80	97.3	94.9	92.8	(15.0)	44.1	67.5
Portland	99.70	99.1	96.4	92.6	(17.1)	66.2	97.2
Washington	93.60	93.0	89.7	82.3	(11.3)	82.9	99.8
San Diego	94.70	94.1	89.5	80.1	(14.6)	60.3	84.6
Birmingham	98.00	95.0	90.4	79.3	(18.7)	35.0	55.4
Seattle	92.30	91.6	89.6	78.4	(13.9)	59.6	90.0
Los Angeles	93.40	92.8	88.2	78.2	(15.2)	60.3	84.6
Buffalo	96.80	94.9	88.6	77.9	(18.9)	44.1	67.5
Phoenix	91.10	91.6	87.8	77.8	(13.3)	57.4	87.6
Baltimore	93.50	93.1	88.5	75.6	(16.9)	56.5	84.8
Newark	97.30	96.1	92.4	76.3	(21.0)	50.5	76.5
	95.29	94.5	90.5	79.3	(16.0)	56.1	81.4
Indianapolis	92.50	89.5	78.2	56.1	(36.4)	58.1	77.9
Tulsa	91.20	82.4	72.9	57.0	(34.2)	45.2	66.2
Wichita	91.20	82.8	74.1	57.5	(33.7)	48.3	72.2
Desha	93.90	85.6	73.6	57.6	(36.3)	40.7	64.8
Oklahoma City	92.70	83.6	74.2	57.8	(34.9)	45.2	88.2
O	90.30	85.5	74.9	58.2	(32.1)	44.1	69.9
Kansas City	94.30	84.6	74.4	58.6	(35.7)	41.1	61.9
Detroit	93.00	90.1	78.5	58.8	(34.2)	51.2	76.3
Cleveland	93.20	91.8	80.5	58.9	(34.3)	58.5	96.0
St. Louis	91.60	85.3	76.2	58.3	(32.3)	41.1	61.9
Des Moines	98.50	91.1	77.6	61.7	(36.8)	42.1	69.5
	92.9	86.6	75.8	58.3	(34.6)	47.9	70.6

- Oil & Gas Journal

- Energy Information Administration, 1984.

- Energy Information Administration, 1984.

Table VII

CITY	Date	Rack Price	Dealer Tank Wagon	Diff. DTW - Rack	Retail Sif-Srv Ex. Tax	Diff. Ret. - DTW	Retail Sif-Srv In. Tax

WASHINGTON	12/4	83.0	89.3	6.3	93.2	3.9	117.7
	12/11	83.4	89.8	6.4	93.5	3.7	118.0
	12/18	80.0	89.3	9.3	93.6	4.3	118.1
	12/25	75.0	88.8	13.8	93.6	4.8	118.1
	1/8	70.5	88.3	17.8	93.3	5.0	117.8
	1/15	69.9	87.6	17.7	93.0	5.4	117.5
	1/22	68.8	86.1	17.3	92.0	5.9	116.5
	1/29	64.7	85.1	20.4	91.1	6.0	115.6
	2/5	62.7	83.1	20.4	89.9	6.7	114.3
	2/12	58.0	83.1	25.1	89.7	6.6	114.2
	2/19	53.9	81.1	27.2	88.5	7.4	113.0
	2/26	49.6	80.1	30.5	87.4	7.3	112.0
	3/5	45.5	77.6	32.1	85.3	8.7	110.8
	3/12	41.0	75.6	34.6	84.6	9.0	109.1
	3/19	43.0	70.6	27.6	82.3	11.7	106.0
	3/26	47.0	66.6	19.6			
INDIANAPOLIS	12/4	84.4	91.3	6.9	94.4	3.1	122.1
	12/11	83.7	90.9	7.2	93.7	2.8	121.4
	12/18	80.4	88.4	8.0	92.5	4.1	120.1
	12/25	77.6	87.5	9.9	92.2	4.7	119.8
	1/8	75.7	86.7	11.0	91.9	5.2	119.4
	1/15	74.0	85.2	11.2	91.0	5.8	118.5
	1/22	70.5	84.9	14.4	89.5	4.6	117.0
	1/29	66.7	81.4	14.7	87.3	5.9	114.5
	2/5	63.6	76.7	13.1	84.4	7.7	111.6
	2/12	57.6	73.3	15.7	79.9	6.6	106.5
	2/19	52.8	69.8	17.0	76.2	6.4	103.0
	2/26	47.3	65.1	17.8	71.3	6.2	100.2
	3/5	44.7	60.5	15.8	69.2	8.7	96.3
	3/12	41.2	53.2	12.0	65.1	12.9	92.4
	3/19	43.0	49.1	6.1	59.5	10.4	85.5
	3/26	46.3	44.1	(2.2)	56.1	12.0	81.9

Source: The Oil Daily, Oil & Gas Journal.

Table VIII

CITY	Date	Rack Price	Dealer Tank Wagon	Diff. DTW - Rack	Retail Slf-Srv Ex. Tax	Diff. Ret. - DTW	Retail Slf-Srv In. Tax
NEW YORK	12/4	85.3	91.5	6.2	98.2	6.7	121.8
	12/11	83.7	91.5	7.8	98.1	6.6	121.7
	12/18	81.0	91.5	10.5	97.8	6.3	121.4
	12/25	81.0	91.5	10.5	98.5	7.0	122.1
	1/6	77.0	91.5	14.5	98.1	6.6	121.8
	1/15	75.2	90.8	15.6	97.9	7.1	121.5
	1/22	74.0	89.9	15.9	97.3	7.4	120.8
	1/29	69.6	87.2	17.6	96.8	9.6	120.3
	2/5	67.6	87.2	19.6	96.0	8.8	119.4
	2/12	61.4	86.2	24.8	94.9	8.7	118.3
	2/19	55.1	85.4	30.3	91.9	6.5	115.5
	2/26	49.6	79.0	29.4	90.1	11.1	112.9
	3/5	45.5	78.0	32.5	87.9	9.9	110.9
	3/12	42.0	76.0	34.0	85.2	9.2	107.9
	3/19	43.8	71.1	27.3	82.8	11.7	105.4
	3/26	45.3	66.1	20.8			
DENVER	12/4	84.3	87.4	3.1	93.0	5.6	114.0
	12/11	83.2	86.9	3.7	91.9	5.0	112.9
	12/18	81.7	85.1	3.4	90.3	5.2	111.3
	12/25	81.7	85.1	3.4	88.9	3.6	109.9
	1/6	76.6	79.6	3.0	87.2	7.6	108.2
	1/15	75.1	79.0	3.9	85.5	6.5	106.5
	1/22	72.9	75.1	3.2	80.0	3.9	104.2
	1/29	69.0	74.6	5.6	78.6	4.0	101.0
	2/5	67.2	70.0	2.8	77.6	7.6	98.6
	2/12	62.0	65.9	3.9	74.9	9.0	95.9
	2/19	58.4	64.4	6.0	70.9	6.5	91.9
	2/26	55.4	59.9	4.5	67.5	7.6	87.5
	3/5	50.7	55.8	5.1	63.2	7.4	84.2
	3/12	46.7	51.3	4.6	59.5	3.2	80.5
	3/19	44.7	46.8	2.1	58.2	11.4	79.2
	3/26	47.9	49.6	1.9			

Source: The Oil Daily, Oil & Gas Journal.

Table IX

CITY	Date	Rack Price	Dealer Tank Wagon	Diff. DTW - Rack	Retail Slf-Srv Ex. Tax	Diff. Ret. - DTW	Retail Slf-Srv In. Tax
CHICAGO	12/4	84.4	89.2	4.8	98.8	9.8	126.7
	12/11	83.2	89.2	6.0	98.8	9.8	126.7
	12/18	79.7	89.2	9.5	98.2	9.0	126.1
	12/25	79.7	89.2	9.5	97.4	8.2	125.3
	1/8	74.6	89.2	14.6	97.1	7.9	123.0
	1/15	73.1	89.2	16.1	96.2	7.0	124.0
	1/22	70.3	87.7	17.4	94.2	6.5	122.5
	1/29	65.9	85.0	19.1	92.2	7.2	119.8
	2/5	63.6	82.5	18.9	89.5	7.0	116.9
	2/12	59.8	78.5	18.7	87.0	8.5	114.2
	2/19	55.2	76.1	20.9	83.3	7.4	111.2
	2/26	48.4	73.6	25.2	81.5	7.9	108.4
	3/5	45.4	72.0	26.6	79.0	7.0	105.7
	3/12	41.7	66.4	24.7	74.3	7.9	100.7
	3/19	42.7	63.4	20.7	70.1	6.7	96.3
	3/26	47.1	57.8	10.7			
BOSTON	12/4	87.1	90.7	3.6	95.1	4.4	115.1
	12/11	84.6	90.7	6.1	95.0	4.3	115.0
	12/18	81.6	90.7	9.1	94.8	4.1	114.8
	12/25	81.6	90.7	9.1	95.4	4.7	115.4
	1/8	77.0	90.2	13.2	94.6	4.4	114.6
	1/15	75.4	88.2	12.8	94.1	5.9	114.1
	1/22	75.6	88.2	12.6	93.6	5.4	113.3
	1/29	71.9	87.0	15.1	92.7	5.7	112.7
	2/5	68.8	86.0	17.2	91.6	5.6	111.6
	2/12	65.2	85.0	19.8	90.2	5.2	110.2
	2/19	59.9	84.0	24.1	87.3	3.3	106.9
	2/26	54.6	76.9	22.3	84.5	7.6	104.2
	3/5	49.7	75.9	26.2	80.9	5.0	100.9
	3/12	46.4	73.0	26.6	76.8	3.8	96.8
	3/19	45.2	69.0	23.8	72.9	3.9	92.9
	3/26	45.9	64.0	18.1			

Source: The Oil Daily, Oil & Gas Journal.

Table X

CITY	Date	Rack Price Cts/Gal	DTW Price Cts/Gal	Diff. DTW - Rack	Retail Slf-Srv Cts/Gal	Diff. Ret-DTW	Retail Slf-Srv Cts/Gal
LOS ANGELES	12/4	83.0	82.0	(1.0)	93.2	11.2	116.8
	12/11	83.0	82.0	(1.0)	93.4	11.4	117.0
	12/18	83.0	82.0	(1.0)	93.4	11.4	117.0
	12/25	83.0	82.0	(1.0)	93.7	11.7	117.3
	1/8	80.8	82.0	1.2	93.7	11.7	117.4
	1/15	79.3	82.0	2.7	92.8	10.8	116.4
	1/22	77.3	75.5	(1.8)	91.7	16.2	115.2
	1/29	75.0	79.0	4.0	90.8	11.6	114.0
	2/5	71.8	75.5	4.7	89.7	13.2	113.1
	2/12	68.8	72.5	3.7	88.2	13.7	111.5
	2/19	65.2	71.5	6.3	86.8	15.3	109.5
	2/26	60.5	69.5	9.0	85.5	16.0	108.5
	3/5	55.8	67.5	11.7	84.0	16.5	107.0
	3/12	51.5	63.5	12.0	80.3	16.6	103.1
	3/19	51.3	61.5	10.2	78.2	16.7	100.8
	3/26	53.5	60.5	7.0			
NEWARK	12/4	84.6	92.6	8.0	98.0	5.4	115.0
	12/11	84.3	93.1	8.8	97.7	4.6	114.7
	12/18	82.2	93.1	10.9	97.3	4.2	114.3
	12/25	79.1	92.1	13.0	97.2	5.1	114.2
	1/8	77.7	91.1	13.4	96.7	5.6	113.7
	1/15	75.8	91.1	15.3	96.1	5.0	113.1
	1/22	73.0	90.1	17.1	95.4	5.3	112.4
	1/29	69.1	89.1	20.0	94.6	5.7	111.8
	2/5	65.4	88.1	22.7	93.8	5.7	110.8
	2/12	62.3	86.1	23.8	92.4	6.3	109.4
	2/19	56.8	85.1	28.3	89.6	4.5	106.5
	2/26	53.5	82.1	28.6	86.7	4.6	103.7
	3/5	52.0	79.1	26.1	83.8	5.7	100.6
	3/12	50.5	75.1	24.6	78.6	3.5	95.6
	3/19	45.3	69.6	24.3	76.3	6.7	93.3
	3/26	44.3	64.1	19.6			

Source: The Oil Daily, Oil & Gas Journal.

Table XI

CITY	Date	Rack Price Cts/Gal	DTW Price Cts/Gal	Diff. DTW - Rack	Retail Slf-Srv Cts/Gal	Diff. Ret-DTW Cts/Gal	Retail Slf-Srv Cts/Gal
PHILADELPHIA	12/4	85.3	87.1	1.8	94.5	7.4	121.2
	12/11	84.0	87.1	3.1	91.2	4.1	117.7
	12/18	81.4	86.1	4.7	90.8	4.7	117.3
	12/25	79.2	86.1	6.9	91.1	5.0	117.6
	1/8	77.0	86.1	9.1	90.7	4.6	117.2
	1/15	75.4	85.6	10.2	90.5	4.9	115.9
	1/22	73.2	85.1	11.9	89.7	4.6	116.1
	1/29	69.9	84.1	14.2	86.8	4.7	115.2
	2/5	67.5	82.1	14.6	87.9	5.8	114.2
	2/12	62.0	81.1	19.1	87.0	5.9	113.2
	2/19	56.5	80.1	23.6	84.5	4.4	110.3
	2/26	50.4	75.1	24.7	82.2	7.1	107.4
	3/5	45.8	72.1	26.4	78.9	6.8	104.6
	3/12	43.0	67.1	24.1	73.5	5.4	98.9
	3/19	43.8	60.6	16.8	68.1	7.5	93.2
	3/26	44.3	54.1	9.8			
DETROIT	12/4	85.1	95.6	10.5	94.5	(1.1)	122.3
	12/11	84.9	94.0	9.1	93.6	(0.4)	121.4
	12/18	82.2	92.0	9.8	93.0	1.0	120.8
	12/25	79.4	92.5	13.1	92.5	0.0	120.2
	1/8	77.6	90.9	13.3	91.1	0.2	118.7
	1/15	76.0	90.1	14.1	90.1	0.0	117.7
	1/22	72.2	89.1	16.9	87.5	(1.6)	114.4
	1/29	66.0	85.6	19.6	85.0	(0.6)	112.4
	2/5	62.5	84.8	22.3	81.3	(3.5)	108.5
	2/12	59.3	81.5	22.2	78.5	(3.0)	105.6
	2/19	55.6	78.2	22.6	75.6	(2.6)	102.7
	2/26	50.3	75.9	25.6	71.6	(4.3)	98.5
	3/5	44.6	69.1	24.5	67.6	(1.5)	94.3
	3/12	40.3	62.4	22.1	62.1	(0.3)	88.6
	3/19	43.4	59.1	15.7	58.8	(0.3)	85.1
	3/26	46.7	54.0	7.3			

Source: The Oil Daily, Oil & Gas Journal.

Table XII

CITY	Date	Rack Price Cts/Gal	DTW Price Cts/Gal	Diff. DTW - Rack	Retail Sif-Srv Cts/Gal	Diff. Ret-DTW	Retail Sif-Srv Cts/Gal
ATLANTA	12/4	83.3	86.2	2.9	95.9	9.7	115.2
	12/11	82.4	86.2	3.8	95.7	9.5	115.1
	12/18	79.2	83.7	4.5	94.6	10.9	114.0
	12/25	75.4	82.4	7.0	92.6	10.2	111.9
	1/8	70.9	81.2	10.3	91.3	10.1	110.5
	1/15	69.4	80.2	10.3	89.7	9.5	108.9
	1/22	68.3	76.2	7.9	88.2	12.0	107.3
	1/29	65.2	77.2	12.0	86.7	9.5	105.8
	2/5	61.9	77.2	15.4	84.6	7.4	103.6
	2/12	57.3	76.2	18.9	82.3	6.1	101.3
	2/19	53.1	72.2	19.1	79.4	7.2	98.4
	2/26	48.4	64.7	16.3	76.5	11.8	95.5
	3/5	43.3	59.7	16.5	73.6	13.9	92.3
	3/12	41.3	54.7	13.4	69.8	15.1	88.4
	3/19	43.9	51.2	7.3	68.2	17.0	86.7
	3/26	46.4	47.7	1.3			
TULSA/ OK. CITY	12/4	82.6	90.1	7.5	94.7	4.6	113.7
	12/11	81.1	90.1	9.0	93.6	3.5	112.6
	12/18	78.0	89.1	11.1	91.2	2.1	110.2
	12/25	74.2	86.8	12.6	86.3	(0.5)	105.3
	1/8	70.6	84.1	13.5	84.9	0.8	103.9
	1/15	68.8	84.1	15.3	82.4	(1.7)	101.4
	1/22	66.5	84.1	17.6	79.1	(5.0)	98.1
	1/29	62.3	72.4	10.2	76.1	3.7	95.1
	2/5	61.5	68.9	7.5	74.1	5.2	93.1
	2/12	59.0	67.9	8.9	72.9	5.0	91.9
	2/19	52.0	66.1	14.1	68.2	2.1	87.3
	2/26	45.4	58.0	12.6	63.2	5.2	83.2
	3/5	43.1	53.0	10.0	59.1	6.1	78.1
	3/12	40.5	48.0	7.5	56.3	8.3	75.3
	3/19	42.5	49.0	6.5	57.0	8.0	75.0
	3/26	45.9	50.0	4.1			

Source: The Oil Daily, Oil & Gas Journal

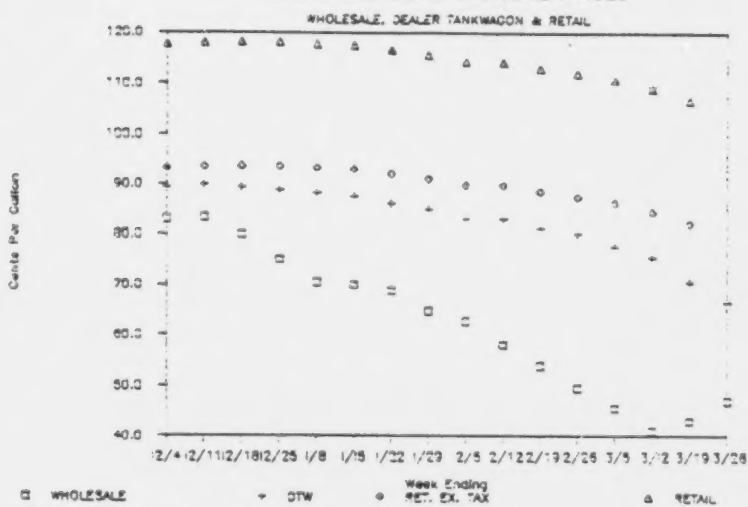
Table XIII

CITY	Date	Rack Price Cts/Gal	DTW Price Cts/Gal	Diff. DTW - Rack	Retail Sif-Srv Cts/Gal	Diff. Ret-DTW Cts/Gal	Retail Sif-Srv Cts/Gal
MIAMI	12/4	83.3	89.9	6.6	96.7	6.8	115.3
	12/11	82.4	89.9	7.5	97.0	7.1	115.6
	12/18	79.2	89.9	10.7	96.1	6.2	114.7
	12/25	75.4	89.4	14.0	94.5	5.1	113.1
	1/8	70.9	88.9	18.0	94.2	5.3	112.8
	1/15	69.4	87.9	18.5	92.4	4.5	111.0
	1/22	68.3	86.9	18.6	90.7	3.8	109.3
	1/29	65.2	85.2	20.0	89.2	4.0	107.8
	2/5	61.9	84.1	22.2	88.0	3.9	106.6
	2/12	57.3	81.7	24.4	85.9	4.2	104.5
	2/19	53.1	80.0	26.9	83.9	3.9	102.5
	2/26	48.4	79.2	30.8	82.0	2.8	100.5
	3/5	43.3	77.2	34.0	80.1	2.9	98.7
	3/12	41.3	73.3	32.0	73.7	0.4	92.3
	3/19	43.9	68.6	24.7	70.3	1.7	88.9
	3/26	46.4	62.9	16.5			

Source: The Oil Daily, Oil & Gas Journal.

Chart I

WASHINGTON, D.C. GASOLINE PRICES



INDIANAPOLIS GASOLINE PRICES

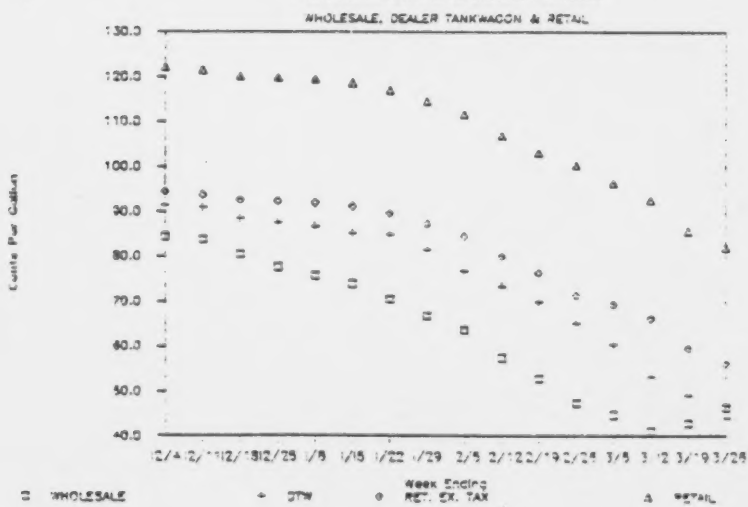
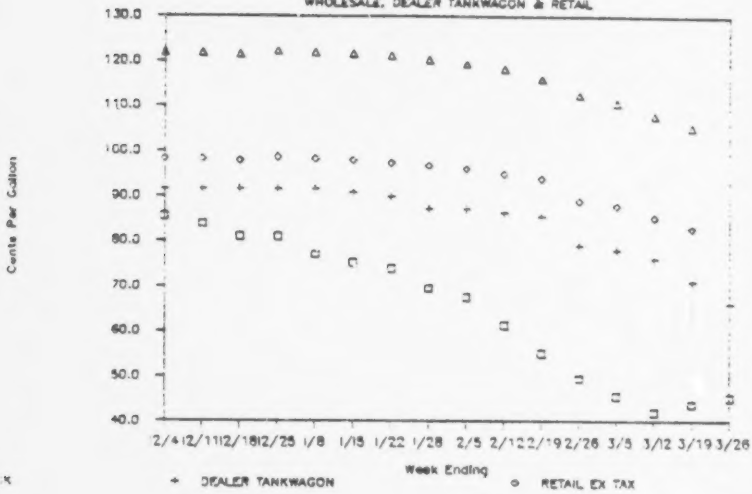


Chart 11

NEW YORK GASOLINE PRICES

WHOLESALE, DEALER TANKWAGON & RETAIL



DENVER GASOLINE PRICES

WHOLESALE, DEALER TANKWAGON & RETAIL

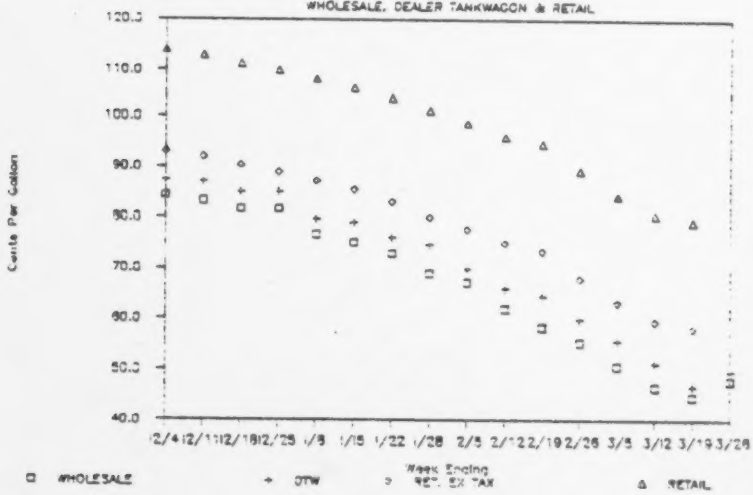


Chart III

CHICAGO GASOLINE PRICES

WHOLESALE, DEALER TANKWAGON & RETAIL

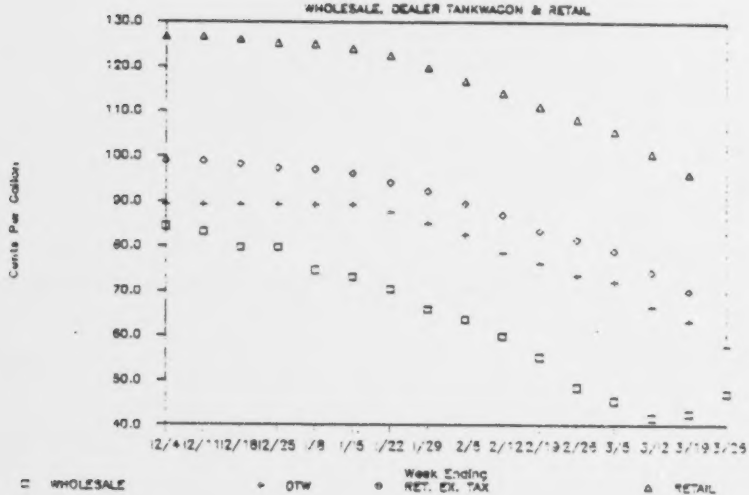


Chart IV

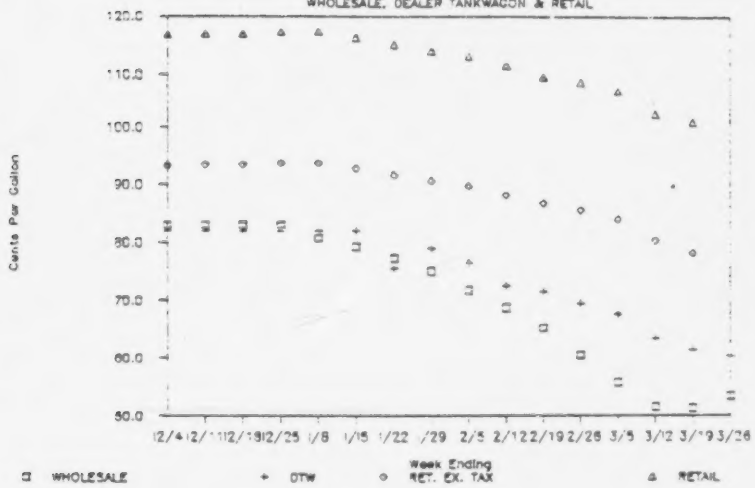
LOS ANGELES GASOLINE PRICES
WHOLESALE, DEALER TANKWAGON & RETAIL

Chart V

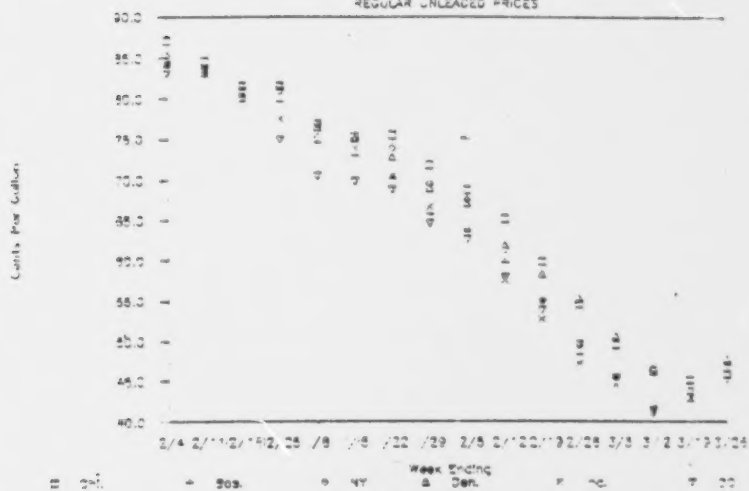
SIX CITIES' WHOLESALE
REGULAR UNLEADED PRICES

Table XIV

COST OF GASOLINE OVERPRICING IN MAJOR CONSUMING STATES (000 GALLONS & 000 \$)								
STATE	GALLONAGE	% TOTAL	1st Q GAL.	S-FIRM MKT SHR	S-FIRM SALES	CTS/GAL EXCESS	S-FIRM COST	% of MARKET
California	11,413,578	0.11	2,623,123	82%	2,152,601	\$0.07	\$148,529	\$111,397
Texas	8,501,979	0.08	1,955,435	82%	1,212,382	\$0.11	\$138,212	\$103,659
New York	6,261,510	0.06	1,440,147	85%	936,096	\$0.13	\$138,542	\$103,907
Florida	5,261,728	0.05	1,210,197	58%	701,915	\$0.14	\$99,872	\$74,754
Ohio	4,877,793	0.05	1,121,392	85%	953,609	\$0.09	\$84,871	\$63,653
Illinois	4,879,169	0.04	1,076,209	74%	798,395	\$0.12	\$96,567	\$71,676
Michigan	4,042,347	0.04	929,740	75%	697,305	\$0.08	\$57,876	\$43,407
Pennsylvania	4,036,989	0.04	928,507	84%	779,946	\$0.13	\$100,613	\$75,480
New Jersey	3,518,178	0.03	809,180	73%	590,702	\$0.12	\$89,703	\$52,277
Georgia	3,092,397	0.03	711,297	62%	441,004	\$0.08	\$34,839	\$26,130
..btotai	55,685,866	0.52	12,807,749		9,261,954	\$0.11	\$1,018,815	\$764,111

Source: National Petroleum News, Energy Information Administration, C/LEC calculations.

Table XV

CALCULATION OF MAJOR OIL COMPANY GASOLINE OVERPRICING
January - March 1986

Estimated national gasoline consumption
January - March: 24.9 bill. gals.

Eight-firm Mkt. Share 52%

Estimated Sales for Top 8 Firms
January - March: 12.9 bill. gals.

Estimated Average Overprice Per Gallon
January - March: 11 cts/gal.

Assume Overpricing Occurs in 75% of Top 8 Sales:
 $12.9 \times .11 \times .75 = \$1.067$ billion

SECTION II

Major Oil Companies Lag in Lowering Crude Oil Prices

The story of how major U.S. oil companies used their market power to keep retail gasoline prices above competitive market levels would not be complete without an examination of another practice common to these companies -- their refusal to lower crude oil prices in line with independent refiners and with declining product prices. Refusal to reduce crude prices is just another example of efforts by the major companies to maintain oil prices above competitive levels.

Crude oil prices in the United States are set by crude oil purchasers -- refiners. As integrated companies, the majors not only set the price of the crude oil they buy from other producers, but most importantly, the crude oil they buy from themselves. Higher crude prices mean increased overall profits. Independent refiners, on the other hand, produce little of their own oil, and therefore have a competitive economic interest in bringing down a major cost component of their business.

Major oil companies control much of the domestic crude production, so to prop up profits they have a strong interest in keeping the posted price they pay for crude as high as possible... However, independent refiners are buying crude at about \$4 per bbl. less than the majors. That has helped push wholesale prices for gasoline down to 45 cents to 50 cents per gal., from 80 cents in December. (Business Week, March 10, 1986)

The table below presents recent posted prices for West Texas Intermediate crude oil, the most widely traded crude oil, for both major and smaller integrated companies:

TABLE XI:
WTI POSTED PRICES
\$/BBL

DATE	Exxon	Texaco	Amoco	Arco	Citgo	Crown	Sun	Marathon
1/1	\$28.00		\$28.00	\$28.00	\$27.25		\$27.75	\$28.00
1/22	27.00	\$27.00	27.00	27.00	22.50	\$24.00	23.50	24.00
2/4	23.00	24.50	23.75	23.50	18.00	19.50	20.50	22.50
2/20	20.50	20.00	20.00	20.00	15.00	17.50	18.50	17.75
3/1	18.75	19.00	18.75	17.50	14.00	15.00	16.00	16.00
3/17	16.00	15.50						

Source: Platt's Oilgram.

Based on these reported prices, it is obvious that Business Week's observations were correct. The major oil companies have resisted cutting the price of crude oil in an effort to stem the price drop. Because nearly 90 percent of their net income is dependent on crude and natural gas production, the majors have been very slow to adjust their prices.

Another factor that affects the major oil companies primarily is the operation of the Windfall Profits Tax (WPT). The WPT taxes at a 70 percent rate the difference between a base price and the market price. In 1985 the base price for Tier 1 (old) oil for the major oil companies was \$18 per barrel. Thus, until the market price reached \$18 per barrel, the majors, whose old oil production is approximately 2.9 million barrels per day, were provided with an effective cushion by the WPT. Below \$18 per barrel no WPT is collected and as a result represents a real income loss to the companies. Independent refiners, on the other hand, who are net buyers of crude oil, are far more interested in obtaining the cheapest crude possible and thus expressed much less

concern about falling crude prices.

In trying to maximize profits during an oil price crash, the major integrated oil companies have not only resisted cutting their domestic crude prices, but were the first to obtain netback pricing deals with the Saudis and during at least the period January through March 1986 charged their own gasoline dealers wholesale prices averaging between 10 and 15 cents above market levels.

Despite their best efforts, it looks as if the major companies have thus far failed in their efforts to prevent a sharp price drop. Pressure from consumers seeking out the least costly gasoline supplies -- from non-major suppliers where available; pressure from dealers -- from adverse publicity and lawsuits; and pressure from the now widespread availability of netback deals are forcing the major companies to slowly reduce both their own crude oil prices and their DTW/retail gasoline prices.

SECTION III

Refinery Cutbacks Help Increase Wholesale Gasoline Prices

The companies still have not exhausted their supply of weapons to counteract competitive market conditions. The upcoming summer driving season, the time when oil companies historically raise gasoline prices, is providing just such an opportunity. The major oil companies have belatedly realized the problems inherent in netback oil pricing, particularly when it is available to more than just a handful of large integrated international companies. At the National Petroleum Refiners Association convention held recently in Los Angeles, Chevron Corp. chairman George M. Keller, stated in a speech that producer moves toward netback pricing arrangements for crude oil sales "are inherently unstable and have played a big part in the market's volatility..." and have "permitted prices to fall so far so fast." (The Oil Daily, March 25, 1986.)

As crude prices have been falling, major oil companies have been able to shift profitability from crude production to refining. In 1985 crude oil acquisition costs for U.S. refiners fell 7.1 percent below 1984 levels. These lower crude costs were not passed on to consumers. Instead they show up as increases in refiner margins and profits. "Refining margins for the last 3 quarters (of 1985) have been at levels last experienced in mid-1983." (U.S. Energy Industry Financial Developments, 1985 Fourth Quarter, "Energy Information Administration, April 1986.) "Refining and marketing income of 10

major integrated petroleum companies reporting line-of-business results increased by 67.2 percent for the quarter and by 122.8 percent for the year relative to 1984." (Ibid.) Or, as another oil industry trade publication has reported, "Crude price decreases can result in increased refining and marketing margins, as they did last spring. Gasoline prices rose as crude prices fell, providing many companies with wide margins. There is a good chance this will happen again, at least on some products and in some areas." (National Petroleum News, March 1986, p. 18.)

If U.S. refiners succeed in reducing the availability of gasoline over the next two months, they may not only prevent further gasoline and crude oil price declines, but may actually help increase prices above current levels for the summer driving period.

TABLE XIII

CHANGES IN REFINING OPERATIONS, GASOLINE SUPPLY & SPOT PRICES

WEEK ENDING	CRUDE INPUT 000B/D	CAP. UTIL.	TOTAL GAS. 000B/D	LEAD. GAS. 000B/D	UNLD GAS. 000B/D	GAS. STOCKS MIL. B	NY SPOT PER/B
11/29	12384	79.6	6366			215.6	\$34.08
12/6	12574	81.1	6350			219.3	32.35
12/13	12484	80.5	6845			220.7	30.93
12/20	12562	80.3	6617			221.8	28.79
12/27	12553	80.4	6502			222.0	
1/3	12365	79.2	6703	2442	4261	226.4	29.19
1/10	12684	81.0	6714	2014	4700	228.2	29.08
1/17	12598	80.5	6544	1931	4613	231.6	28.66
1/24	12395	79.1	6382	2078	4304	235.0	26.14
1/31	12388	79.1	6659	2039	4620	237.3	25.35
2/7	11695	75.0	6399	2016	4383	240.0	21.42
2/14	12050	77.0	6411	2112	4299	242.7	20.51
2/21	12211	78.6	6414	1928	4437	243.8	19.40
2/28	11925	76.6	6493	1946	4537	245.7	19.02
3/7	11624	74.6	5971	1974	3997	239.9	17.22
3/14	11552	74.4	6091	1930	4111	236.2	17.85
3/21	11481	74.5	5862	1809	4073	229.3	19.32
3/28	11592	75.3	5998	1918	4082	226.3	18.90

Source: Weekly Petroleum Status Report, EIA.

The data in the table above show that since January, U.S. refiners have cut back crude oil inputs by between 500,000 and 1,000,000 barrels of oil a day, reduced refinery capacity utilization from an average of 80 percent to an average of 75 percent and gasoline production by 500,000 barrels per day. As a result, total gasoline stocks have fallen by 19.4 million barrels since the end of February, and spot market prices have gained nearly \$2 per barrel since a low of \$17.22 per barrel was reached in early March.

Unless refiners begin to increase gasoline production, or unless imports begin to increase, or both, the low level of gasoline supplies will permit oil companies to not only increase U.S. gasoline prices by about 5 cents per gallon above current levels, but also stop the fall in crude oil prices.



SERVICE STATION DEALERS OF AMERICA
PRICING ANALYSIS
of
RETAIL SERVICE STATION DIVORCEMENT AND CONSUMER PRICES

INTRODUCTION

A review of gasoline prices and dealer margins since the end of federal regulations and the full implementation of the divorce-ment law in Maryland, clearly demonstrates that consumer prices are not adversely affected by divorce-ment legislation; and in fact, consumers have benefitted in the form of lower prices and greater availability of service.

Various oil company-sponsored, "studies" have claimed that divorce-ment legislation causes consumer price rises, and use these studies to confuse the issue, which is the real extent of oil company control of the retail marketplace.

The studies purport to analyze the effect of the Maryland divorce-ment law on prices, the nation's first, which went into effect on July 13, 1979, one year and one month after the Supreme Court upheld the law against oil company appeals.

BACKGROUND OF DIVORCEMENT'S IMPACT ON PRICES AND DEALER MARGINS

As noted by the Department of Energy in its 1984 draft report on deregulated gasoline marketing, the long term effects of divorce-ment are not clear, due to the fact that no one has undertaken to study them.

Existing oil companies studies have looked at the Maryland market in the years 1979 and 1980, when the gasoline marketing, prices, margins, and allocations were under strict federal control. In fact, what has been called "mandatory predatory pricing" existed during the periods studied by oil companies.

The Department of Energy regulations limited the margin or mark-up on a gallon of gas to 10.5 cents per gallon for company-operated stations, and 15.4 cents per gallon for dealer-operated stations. This was implemented on July 15, 1979, two days after divorcement took effect.

It is no wonder that, as the Barron-Umbeck study stated, "immediately after divorcement, prices rose at the divorced stations." The combination of short supply and gas lines in Maryland at that time, with the new federal regulations, mandated this result.

Nevertheless, at least one oil company study, (Arco-Barron-Umbeck) has attempted to take short term results, assume they are long term results, and come up with a "magic shock number" of consumer costs in order to persuade legislators not to enact divorcement legislation, thus allowing total oil company control of the retail marketplace.

The Arco-Barron-Umbeck study claimed that immediately after divorcement, both the divorced stations and stations in competition with them, as defined by the oil company operators, raised their prices solely as a result of divorcement. The authors claimed that the price increases occurred in self-serve unleaded

regular gas and full service gasoline. They then claimed that the national divorcement law pending before Congress would cost consumers \$1 billion per year by making the following assumptions:

- 1) That the short term results would become the long term results, even though the short term results were mandated by federal regulations.
- 2) That the full-serve/self-serve ratio is 40-60%, when the actual ratio is 20-80%.

It is blatantly misleading to project tremendous costs to consumers based on full-service price increases, which Barron-Umbeck did. In Maryland, 80% of the gasoline is sold at self-service, at prices which are not only competitive but are among the very lowest nation in the nation. This is due to the intense competition between Maryland independent dealers, whose mark-ups on regular leaded and unleaded gasoline, are the lowest in the nation.

SSDA SURVEYS

SSDA reviewed the best available data from the Lundberg organization and compared retail prices and dealer mark-ups on regular leaded and unleaded gasoline from January, 1982 to December, 1984. The dates are very important, as no study has considered the effects of divorcement since its full implementation in Maryland at the end of November, 1981 and the end of federal regulations at the end of January, 1981.

DEALER MARGINS

SSDA reviewed dealer margins on regular leaded and unleaded gasoline from 1982 to 1984. Baltimore, Maryland, the leading divorcement city is compared to 42 other cities.

In direct contradiction of Barron-Umbeck, in January, 1982, immediately after the end of federal regulations and full implementation of divorcement in Maryland, dealer mark-ups on both regular leaded and unleaded gasoline were the LOWEST in the nation. If the economists were correct in their assumption that the short term effects would become the long term effects, this would not have occurred.

This statistic is critical because the dealer has no control over wholesale costs such as for the product, transportation etc.; he controls only his margin and it is only his margin which is effected by divorcement.

If the Barron-Umbeck approach was adopted, that is to assume that dealer margin in Baltimore would remain constant, (lower) relative to those in other cities, then all sorts of claims could be made about how much divorcement would save consumers based on lower dealer margins. More research was needed and was done.

Barron-Umbeck claims that the increase in self-service prices in Maryland, was due to rises in unleaded regular gasoline, thus, implying that dealer mark-ups on this gasoline would be high as well.

Nevertheless, the data from 1982-1984 shows the Baltimore dealer mark-up as averaging 3.86 cents per gallon, second lowest

to the Indianapolis, Indiana average of 3.78 cents per gallon (eight-one hundredth's of a cent lower). The national average for the period is 7.09 cents per gallon.

It appears then, that contrary to Barron-Umbeck claims of Maryland consumers paying about 2 1/2 cents per gallon for self-serve, unleaded regular, consumers actually pay 3 1/4 cents less per gallon.

This is borne out by a survey of retail prices in 63 cities done in July, 1984 by the Lundberg organization. After adjusting for local taxes of the four lowest unleaded, regular, self-serve prices, three were in divorcement cities namely, Wilmington, DE; Baltimore, MD; and Washington, D.C.

The divorcement cities were also significantly lower in their prices on regular gasoline at self-serve than their East Coast counterparts, and were competitive with West Coast prices which are generally lower due to gasoline refined from Alaskan North Slope Crude, which receives favorable windfall tax treatment.

The data conclusively shows that Maryland consumers have not been already affected by divorcement legislation and in fact, have actually saved money.

The Barron-Umbeck report also contains two other pieces of misleading innuendo with regard to the hours of operations of divorced stations, and the closing of stations affected by divorcement.

The study claims that stations are open fewer hours due to divorcement and that this is because service station dealers are

free to set their hours because of divorcement. This is flatly wrong. The Petroleum Marketing Practices Act (PMPA) clearly allows refiners to set hours of operation at their stations, and in fact, the first case on point, Waldman v. Crown Central Petroleum, explicitly upheld the right of a refiner to terminate a Maryland dealer who did not keep the required hours of operation.

It also claims that 11% of the affected stations closed, calling it a "telling statistic." What this innuendo does not say, is that the 11% were 24 in number, 14 of which were acquired rebuilt, and re-opened by Amoco as dealer operations which far surpassed the performance of their company-operated predecessors. The rest were picked up by other major oil companies. Only two obsolete 50-year old units actually closed.

It also does not say that the rate of attrition of service stations in Maryland is one-fourth the national average, preserving competition and emergency services for Maryland motorists. The BarronUmbeck report is clearly wrong in all of its major findings.

Other oil companies have claimed prices are lower in their Norfolk, Virginia company-operated stations than at their dealer-operated stations in Baltimore, Norfolk's Chesapeake Bay sister city.

SSDA reviewed all prices for Baltimore and Norfolk for each month from 1982 to 1984 and after adjusting for taxes, found that Baltimore prices and dealer mark-ups were almost always lower than those in Norfolk. (170 out of 204 possible cases)

The implications of these findings are clear. The best available statistical evidence shows the following:

- 1) Consumer prices in divorce cities are lower than those in the nation as a whole, and the East Coast.
- 2) In Baltimore, Maryland, the laboratory of divorce, consumer prices have not risen; rather, they are among the lowest in the nation. The fierce battle between independent dealers, and their low attrition rate, (one-fourth quarter of the national average) provides consumers with a greater range of available services from convenience stores and car washes to traditional service, as well as, some of the most competitive prices in the country. This is because this market, instead of being controlled by a few oil giants, has gained hundreds of small businessmen competitors, breathing new life into the spirit of free competition in the petroleum marketing industry. Oil company control has been replaced by the business incentive that can only be kindled by the spark of private enterprise.

SERVICE STATION DEALERS OF AMERICA
RETAIL PRICING ANALYSIS
 March 1, 1995

Tax Adjusted Prices in 63 Cities - Lundberg Letter, July 1984

All numbers include 9¢ Federal Tax

* Indicates Divorcement State
 East Coast Cities in Caps

REGULAR UNLEADED SELF-SERVE

NATIONWIDE						EAST COAST					
*WILMINGTON	DE	95.60	Dallas	TX	102.12	*WILMINGTON	DE	95.60			
Los Angeles	CA	96.03	New Orleans	LA	102.16	*WASHINGTON	DC	98.38			
*WASHINGTON	DC	98.38	Salt Lake City	UT	102.18	*BALTIMORE	MD	98.53			
*BALTIMORE	MD	98.53	*NEW HAVEN	CT	102.20	TAMPA	FL	99.76			
Indianapolis	IN	98.61	ATLANTA	GA	102.24	PORTLAND	ME	100.23			
San Diego	CA	99.00	NORFOLK	VA	102.39	MANCHESTER	NH	100.35			
Stockton	CA	99.16	Memphis	TN	102.71	MIAMI	FL	100.57			
Bakersfield	CA	99.28	JACKSONVILLE	FL	102.87	NEWARK	NJ	101.05			
Las Vegas	NV	99.35	Kansas City	MO	102.95	BOSTON	MA	101.07			
Sacramento	CA	99.54	St. Louis	MO	103.11	PROVIDENCE	RI	101.08			
Phoenix	AZ	99.66	Reno	NV	103.16	CHARLESTON	SC	101.27			
TAMPA	FL	99.76	Anchorage	AK	103.76	CHARLOTTE	NC	101.81			
Milwaukee	WI	99.85	Minneapolis	MN	103.98	*NEW HAVEN	CT	102.20			
Louisville	KY	100.05	Cheyenne	WY	104.61	ATLANTA	GA	102.24			
PORTLAND	ME	100.23	Birmingham	AL	104.81	NORFOLK	VA	102.39			
Houston	TX	100.29	Jackson	MI	104.95	JACKSONVILLE	FL	102.87			
MANCHESTER	NH	100.35	Albuquerque	NM	105.22	PITTSBURGH	PA	105.31			
MIAMI	FL	100.57	PITTSBURGH	PA	105.31	ROCHESTER	NY	105.59			
Seattle	WA	100.67	ROCHESTER	NY	105.59	BURLINGTON	VT	106.30			
Cincinnati	OH	100.86	Fargo	ND	105.64	LONG ISLAND	NY	112.37			
Spokane	WA	101.00	Boise	ID	105.85						
NEWARK	NJ	101.05	BURLINGTON	VT	106.30						
BOSTON	MA	101.07	El Paso	TX	106.54						
PROVIDENCE	RI	101.08	Des Moines	IA	107.42						
Denver	CO	101.20	Sioux Falls	SD	111.84						
Chicago	IL	101.25	LONG ISLAND	NY	112.37						
CHARLESTON	SC	101.27	Honolulu	HI	116.67						
San Francisco	CA	101.40									
Fresno	CA	101.49									
Tulsa	OK	101.52									
Little Rock	AR	101.55									
Detroit	MI	101.55									
CHARLOTTE	NC	101.81									
Billings	MT	101.82									
Tucson	AZ	101.86									
Omaha	NE	102.03									

Weekly Vital Statistics and
Analysis in Oil Marketing

Published Fridays

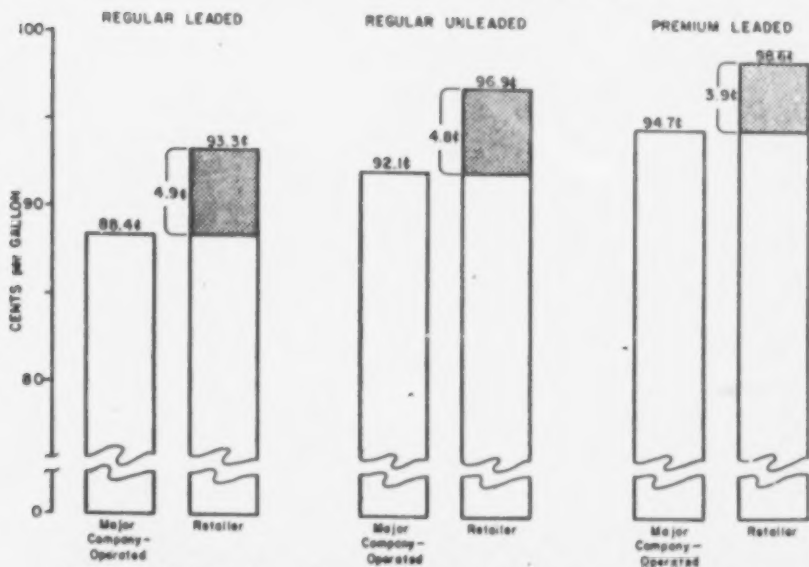
VOLUME VI NUMBER 41

AUGUST 10, 1979

New Pricing Regulations

The Making of 'Predators'

COMPARISON OF U.S. CEILING PRICES AT COMPANY-OPERATED AND OTHER RETAIL OUTLETS



NEW REGULATIONS keep company-operated stations of refiners and jobbers at old ceiling margins. Nationally, these ceilings will keep company-op stations 3.9¢ gal. to 4.9¢ gal. below retailers who use the new 15.4¢ gal. ceiling margin. Average price differences that will result are shown above for the U.S. and on page 2 for regions.

Don Lundberg, Publisher, Mark Emard, Editor-in-Chief, Lynn L. Beavers, Director of Research, William R. Keene, Graphic Presentation, Trillby Lundberg, Business Manager, Craig P. Mendin, Production.

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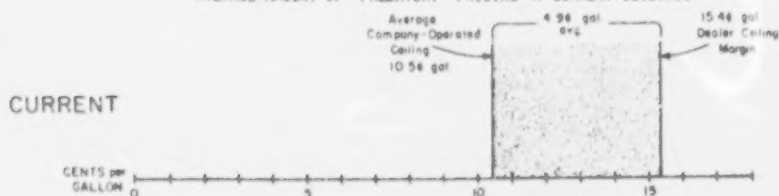
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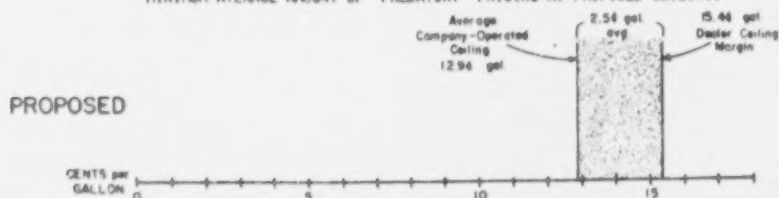
Look What They're Up To Now

Proposed new gasoline price ceilings won't end mandatory
'predatory' pricing, but will drive everybody berserk.

AVERAGE AMOUNT OF 'PREDATORY' PRICING AT CURRENT CEILINGS



MINIMUM AVERAGE AMOUNT OF 'PREDATORY' PRICING AT PROPOSED CEILINGS



PROPOSED new gasoline price ceiling rules would eliminate some mandatory "predatory" pricing, but not all. At a minimum, there would still be a national average of about 2.5¢ gal. of required "predatory" pricing, compared with 4.9¢ now. But the means of achieving this aim are extremely complicated, and most jobbers couldn't do it anyway.

Don Lundberg, Publisher; Mark Emend, Editor-in-Chief; Lynn L. Beavers, Director of Research; William R. Keene, Graphic Presentation; Trilby Lundberg, Business Manager; Craig P. Hardin, Production.

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What did our publisher Dan Lundberg say, August 1,
to NATIONAL CONGRESS OF PETROLEUM RETAILERS in Portland?

THE OREGONIAN, TUESDAY, AUGUST 14, 1979

3M 83

Gasoline profit margins draw criticism

By BETH FAGAN
of The Oregonian staff

The keynote speaker at the National Congress of Petroleum Retailers Monday urged the 500 service station dealers meeting in the Jantzen Beach Red Lion to "live within the law," but to resist government profit regulations "like hell."

Dan Lundberg, a former CBS news correspondent who is the publisher of a weekly national publication on vital statistics and analysis in oil marketing that has been widely quoted during the oil crisis, said that the U.S. Department of Energy, with its regulations on gasoline profit margins, has forced two choices on dealers: "civil disobedience or regimentation."

Lundberg, who is also president of Lundberg Survey Inc., a data gathering corporation that supplies information for the newsletter, said he didn't believe in civil disobedience, "although the NCPR has good reason to encourage it." Dealers won't be able to survive with present regimentation, he added.

To survive, Lundberg said dealers must mount a massive, grass-roots campaign to educate both the public and lawmakers with "gas station economics."

Lundberg said he came to Portland to "declare my personal support" for dealers who are faced with a quandary that he said the public doesn't understand.

Lundberg said that the Department of Energy's newest regulation, which restricts the markup of gasoline to 15.4 cents a gallon over acquisition cost for dealer stations, regardless of the type of service or grade of gasoline, "is going to wipe many (dealers) out."

"The smaller the station, and the more service they give, the more quickly they will have to go out of business," said Lundberg.

"The Department of Energy has said that governors can boost that markup 10 cents in their own states, providing they clear it with DOE's office of hearings and appeals," he said. "But governors don't want to get involved — the whole thing is a political hot potato."

Oregon Gov. Vic Atiyeh "has requested a smaller increase for Oregon dealers."

Lundberg said that the Department of Energy's newest edict is the latest blow to retailers who use the new 15.4 cents per gallon ceiling margin.

"The latest regulation holds the company-operated stations of refiners and jobbers to the old ceiling margins, which are from 3.9 to 4.9 cents a gallon below the 15.4 cents per gallon maximum," said Lundberg.

"That's what's called 'predatory pricing,'" Lundberg said. "It gives company-operated stations a substantial competitive edge over other dealers."

Lundberg claimed that problems for both gasoline retailers and the public could be solved with decontrol of gasoline prices, "restoring us to the free marketplace."

He said that this year, gasoline prices went up an average of 22 cents a gallon. "However," said Lundberg, "only last November, the Department of Energy itself said that decontrol would cost the consumer only 2 cents to 4 cents a gallon extra in 1979."

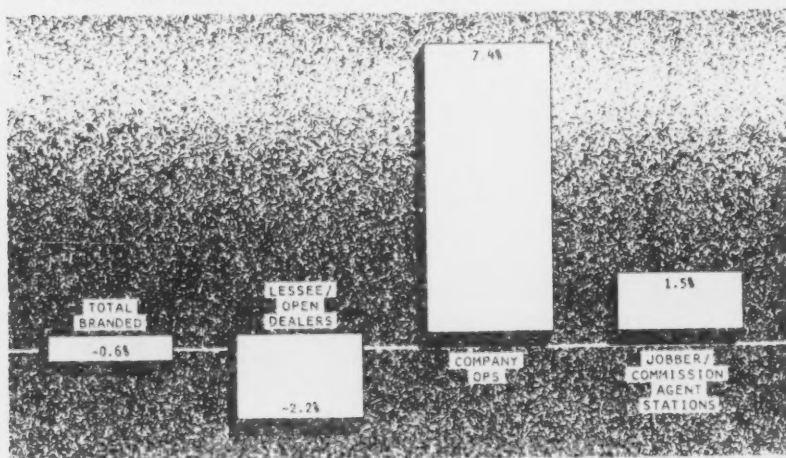
In terms of supply, Lundberg said that inventories are "high enough" right now, but that he considers talk of high inventories "short-term."

He also said that on the basis of wholesale prices alone, the "linear curve" outlook will have the average price of gasoline up to \$1.17 a gallon by the end of this year. "That's not a flat prediction," said Lundberg. "But that is the indication, as crude works its way through the economy."

New Survey Results

How Gasoline Station Operations Are Changing

CHANGES IN MAJOR-BRAND STATION OPERATIONS BY TYPE, 1985 - 1986



Lundberg Letter Chart

THE NUMBER of major-brand company-operated stations increased 7.5% the past year, jobber/commission-agent stations increased 1.5%, and dealer stations decreased 2.2%, a new Lundberg Letter survey shows. The total of major-brand retail gasoline stations declined 0.6%.

Dan Lundberg APR, Publisher

Contributing Editors: John Ayling, Mark Emond, Jan C. Lundberg, Graphics: Chu Shaw, Business Manager: Narda B. Shelton, Production: Craig P. Harlan

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Mailing address: P.O. Box 3298, North Hollywood, California 91605-0098, U.S.A. Telephone: (818) 788-5111, TWX: 1-810-498-2728

E-mail: hnd@tfn.berkeley.edu (not verified)

SUBSCRIPTION SCHEDULE: ON REQUEST

Mr. MAVROULES. Mr. Gaeta, if you would proceed, please, with your testimony.

TESTIMONY OF MATT GAETA, SHELL DEALER, WEST PEABODY, MA

Mr. GAETA. Thank you, Mr. Chairman. Members of the committee, my name is Matt Gaeta, and I now operate a Shell station which was formerly an Arco station in Peabody, MA.

I have come here today because I believe that you are interested in helping preserve small business in running these gasoline stations and not having them taken over by major oil companies. I want to describe what my experiences have been and the difficulties that I have had in being able to operate a business in the way that I think is good for a businessman and suited to community needs.

For 20 years I have operated an Arco station on these principles—I sold full serve. We pumped the gasoline for the consumer at competitive prices.

I operate an automobile repair shop and we do minor repairs. I sell tires, batteries, and accessories, and I do the police ordered towing for the city of Peabody, the town of Lynnfield, the State police in Peabody, and the State police in Topsfield.

I also have a contract with AAA, ALA, Amoco Motor Club, and I do emergency road service in these areas. I cover a 20-mile radius from where my station is located.

I have a car rental agency on my location that in the event the customer breaks down and their car is inoperable, I can rent them a vehicle cheaper than a cab can take them to any direction because there is no public transportation in my area.

In the last couple of years with the tough drunk driving laws I have invested in a limousine service, so I have three stretch limousines that we rent out of my location, and they are doing very well.

I try to plan and invest in my business for the future and I have been one of the most successful Arco dealers in this region for many years. I have been able to expand my business and continue to do these things for the community.

Now the problem has been that Arco has left the east coast and done so under circumstances that it did not allow me to do business as I had done in the past. It also does not allow me to buy the station and does not allow me to plan sufficiently to make alternate arrangements.

This is what happened. In April 1985 it was announced one Monday morning that Arco was pulling out of all areas east of the Mississippi. That was a radio announcement. There was no company official. It was a radio announcement, and that's how we got the information. That was after 21 years with Arco.

In May 1985 I received a 180-day letter of termination. This letter said that Arco was going to leave the east coast and they would do one of two things. They would sell me my property or name a successor franchise. I sent a letter to Arco saying that I wanted to purchase my property. They sent me a letter back, took about 3 to 4 weeks, and they said that they had signed a letter of

intent to sell my property to Shell Oil Co. However, if the sale doesn't go through, they will sell me the property.

Now here I am. It's 2 months after they announced that they are going to pull out, and I still don't know who my supplier is going to be or what direction my business is going to take, and this fellow said that you can go in there with no money. I have over \$500,000 invested in my business.

In September, Shell offered me a franchise, and the franchise that Shell offered me once again would only be binding if the sale went through between Shell and Arco, so, in September I still don't know what I am going to be doing for the rest of my life.

The offer that Shell gave me was confusing, so we took it before the Federal court in Boston. We went before Federal Judge Garrett. This Federal Judge Garrett agreed that we had a serious question from the franchise offer and he put an injunction on the sale until Shell changed the offer. The injunction stayed in effect until February 15, 1986, at which time Shell did change the offer that they made to me and I took 29 dealers with me on this injunction. When this injunction was lifted February 15, Arco refused to sell me gasoline.

I had two gasoline loads that evening and they refused to sell me gasoline in February. Shell had not come in, so I was left in a state of panic and confusion as to——

Mr. MAVROULES. Excuse me. Repeat that about February. What happened?

Mr. GAETA. On February 15, Federal Judge Garrett lifted the injunction because Shell had now made what he termed a reasonable offer. We appealed the judge. We are on appeal now, and Arco refused to sell me gasoline. I had a gasoline load coming at midnight and I called the terminal supervisor and I asked when my load of gasoline was coming, and he said that they just took all the paper out of the machine and threw them away.

The supplier at that time for Arco was a company called J.P. Newman, and I have the superintendent's name on record with my papers, so they refused to sell me gasoline. I was adrift in a sea of confusion because I didn't know what to do at that particular time, so what I did was, I debranded my station. I put the signs up I am not selling Arco gasoline and I had to go out and purchase gasoline on the open market to my surprise which was 20 cents a gallon cheaper than what Arco was selling to me.

The injunction was lifted and then Shell came in. This had left me with a 1-day notice period to shift my marketing plans so that I may suit the needs of the community, the needs of my customers, and the needs of my employees.

Shell has now taken over my station. The marketing plan that Shell has does not involve low gasoline prices that may have been available to me if I were a free and independent businessman. It also involves their national policy as to how the station should look and I have to conform to the types of services that are allowed by this company. This means that I can no longer store cars on my property which means I may have to move my towing company, stop renting cars and limousines, and it undermines my ability to use the station as I have in the past that has been successful for many years and useful to the community.

Also, I have had to make these changes on very short notice. Good locations for the purpose that I use this property are hard to find. If there is going to be any integrity in having small businesses operate the service stations and being able to meet the local community needs and offer good prices, there is going to have to be some changes in the laws. The way the law is now, it allows oil companies to come in and take over the stations and meet policy needs that may be appropriate from a national view, but do not meet the needs of the local community or the small businessman.

These are some of the ideas that I have concerning the laws that are needed. The independent businesses should be allowed to purchase gasoline from sources that offer them the best price and be able to bring the best price to the consumer.

In my confusion and panic I also rented a station that is 2 miles north of me. It is not as good a location as I have. I have a very strategic location. It is on the crossroads of two of the busiest highways in the State—Route 1 and Interstate 95—and I had to purchase a station further away, and I bought the tanks and the pumps when I did that, and in comparing the prices from January to today, I can buy gasoline—I was buying gasoline for 27 to 30 cents a gallon cheaper at my new location and selling, and passing the savings on to the consumer.

I was in the "Peabody Times" four times for having the best prices in the area—at my other location, not at my branded station.

I think that the independent businessman, in the event of a market withdrawal, should have the opportunity to purchase the property before anybody else. He should not be required to sacrifice the business to satisfy the marketing plan of a new supplier.

He also should have a much longer transition period once he knows who the supplier is and when they will take the property over, so that he does not have to give up his prior business.

I would like to thank you for taking the time to hear me, Congressman Mavroules, and also for inviting me down. I brought with me my attorney from Boston, Miles Jacobs, if the members have any questions they would like to ask us.

Mr. MAVROULES. Thank you. We are going to listen to the other two witnesses and then we will open it up for questions to all of you.

Mr. Patrick if you would proceed?

TESTIMONY OF STAN PATRICK, EXXON DEALER, METTAIRIE, LA

Mr. PATRICK. Thank you, Mr. Chairman. I have been connected with the oil industry for 36 years as an employee of Amoco in marketing management, as an independent jobber, and for 8 years as an Exxon dealer.

After the first year of association with Exxon, I was 1 of 16 dealers nationwide to be selected to the National Dealer Advisory Council. I was awarded a plaque as a sales leader in 1978.

In 1979 at Exxon's request and having a dislike for Government intervention in controlling business, I acted stupidly as a witness and testified before the Louisiana House and Senate subcommittee against divorcement in the oil industry. However, Exxon's actions

as well as other majors after the threat of divorcement was removed and the surge of company-operated stations since the lifting of controls in 1981 made me realize that I was fully used by the company. In the interest of time, I have submitted a copy to you of my own case history in a letter to Exxon when I left the station.

The oil companies say that if a bill of this type is passed the ones that will suffer will be the consumer. This, of course, is false, for if the wholesale prices charged dealers were competitive, dealers in turn would be more competitive with their customers.

At present, the consumer retail prices at company outlets are often less than the wholesale prices charged to dealers. The facts are the oil companies aren't interested in consumer prices. Their pricing policies and actions such as excessive rents have forced dealers to increase their retail prices. I was economically forced out of my station last year and the company took over and operated the location. Exxon had doubled my rent from \$2,200 a month in 1978 to \$4,400 last year, with \$5,500 a month required per the lease in 1987.

On the day I left, Exxon immediately dropped the price on my regular gasoline at self-service to a penny below what my cost was. Today no service station dealer can survive if his company wants to get rid of him. I am referring to such practices as excessive rent increases, infiltration of company-operated self-service outlets, and using their retail company operations to undercut the wholesale prices charged to dealers.

One dealer in New Orleans had his company build a new company-operated outlet a quarter of a mile away, selling gasoline at near his cost. He was told that if he didn't like it, they would buy him out at market value for his product and equipment plus a little extra cash bonus for getting out. Their reason was they wanted his station for company operation.

They also informed him that their goal was to have as many company operations as possible. Through tactics of this kind, the current status of the major oil company operations in the New Orleans market is: Texaco has 21 dealers, 29 company outlets for 73 percent of the total unit, and an estimated volume of 70 percent; Gulf has 23 dealers and 38 companies, an estimated volume of 70 percent; Exxon has 30 dealers and 30 company operations, 50/50 split with an estimated total net volume of 65 percent; Shell has 58 dealers and 15 company outlets, 26 percent of units, 30 percent of the estimated volume.

At this point I would like to submit a map, even though the man from the FTC felt these kind of things were ridiculous to show, which indicates metropolitan New Orleans and the company-operated outlets by brand as follows. Red is for Amoco. Yellow is for Shell, green, Texaco, blue, Gulf, and black, Exxon. This totals 111 company outlets and approximately 65 percent of the volume.

[The map referred to is being held in subcommittee files.]

Mr. PATRICK. An example of this disproportionate balance in New Orleans is a Gulf dealer who runs an excellent operation, and has been there a long time, on Chef Menteur Highway. His average monthly volume is 45,000 gallons. Nearby are two company-operated Gulf locations on the same artery, one doing 200,000 gallons per month and the other, 300,000. Both company outlets are fully self-

serve. Both stations are selling gasoline around the dealer's wholesale cost.

At this point I also wish to submit to you an album of pictures of company operations and wholesale prices which indicate in full the proof of the below cost selling.

Mr. MAVROULES. The visual aids will be included in the record as well as your entire statement.

Mr. PATRICK. I would like to have you keep the map and the book as part of the testimony. As an example of pricing methods used, Texaco's wholesale costs—this goes back a number of months before the tremendous escalation when this report was put together and still on the same basis even though the price is different—they were \$1.08 for regular, \$1.11 for unleaded, and \$1.17 for premium unleaded.

At several company outlets their posted prices of which there is the picture, for \$1.49—4 cents below the dealer cost, \$1.13 for unleaded, that gives him a 2-cent margin, and \$1.24 for premium at a 7-cent margin under a pool structure. You know, you're bankrupt before you say hello.

It is also interesting to note that several of the majors are purchasing product through exchange agreements rather than their own product. An example is Murphy Oil Co. from Gulf, Texaco from Tenneco, and so on.

The President recently stated that small business was extremely important to America and it was the largest single employer in the United States. In New Orleans, the 111 company operations equate to 330 jobs versus 1,110 if those locations were full service dealer operations.

Despite all this, the company operations are increasing. We need your help, and that's why we are here—to stem this discriminatory price practice and operation practice before it's too late.

Thank you.

[Mr. Patrick's attachments to testimony follow:]

PATRICK'S CANAL BLVD. EXXON

**Happy Motoring!**

January 24, 1985

 5101 Canal Blvd.
 NEW ORLEANS, LOUISIANA 70124
 Phone: 486-2866

 Exxon Company, U.S.A.
 Post Office Box 29506
 New Orleans, LA 70189-0506

Dear Sir:

It is with a great deal of alarm, sorrow, and just being darn mad, that I am forced to write this epistle.

The main purpose of this letter is to notify you, in writing, by personal delivery, per the terms of my lease dated November 1, 1982, that I can no longer sustain the economic pain Exxon has imposed upon me as an individual and/or lessee dealer.

I have been connected with the oil industry since birth; my father, having started with Standard Oil Company of Indiana in 1922. After completing my educational and military responsibilities in 1949, I have worked for, and independently with, three major oil companies. In otherwords, for thirty-six years I have been directly connected to the industry.

In 1977, I leased the above premises from your company as an independent businessman. To me, the capital outlay was a large dollar investment, namely \$40,000. My intent was to show a profit, naturally, but to strive hard to obtain same.

My motto in life has been to work hard to sustain the needs of my family and myself with pride and dignity, as well as improving, hopefully, the sales and well-being of those I represent.

After the first year of association with Exxon, I was one of sixteen dealers nationwide to be selected to the National Dealer Advisory Council. I was awarded a plaque as a sales leader in 1978.

In 1979 per your request, knowing my feelings of a dislike for government intervention in controlling business, I acted as a witness, on your behalf, and testified before the Louisiana House and Senate Subcommittees, that they refrain from imposing Divorcement Proceedings against the oil industry. I did this even though I was, and still am, a member and believer in the Retail Dealers' Association. In fact, I am on the Board of Directors for the New Orleans Chapter of same.

Exxon Company, U.S.A.
Page 2
January 24, 1985

Since 1978, many things seem to have gone astray from the former handshake agreement between company and dealer. To this end, and primarily as it pertains to the writer, I list the following:

1. In October of 1977, I leased the subject location which was then selling an average of 65,000 gallons of gasoline per month.
2. Within one year after pursuing a hard line of selling, advertising, excellent service, twenty-four hour operation, etc., I averaged 90,000 plus per month.
3. In March, 1979, due to the so-called gas crisis, allocation set in and by May, 1979, until the summer of 1980, I was on allocation most of which was 80% of my purchases for the year and by month of 1978, the base year.
4. In 1978, but primarily 1979, 1980, and 1981, prices escalated rapidly. This, coupled with allocation and the government's request for conservation of fuel and purchases of smaller more economical cars, quickly eroded my volume.
5. Exxon, gloating over the demise of Divorcement Proceedings, and the 1981 lifting of gasoline controls at this point, seemed to turn on their past lifeblood, the dealer organization and presumably devised a plan for the future.
6. This plan was observed by the writer and other dealers to follow a hard line of economic hardships for dealers as follows:
 - a. Sell gasoline in heavy quantities with primary sales through company-operated stations at self-service, priced at or below dealer wholesale cost. (This push on sales was in spite of the so-called government's way for conservation of product.)
 - b. Also, hit the dealer in the pocketbook hard by restructuring your lease so that you were thought of only as a landlord and dealers as tenants. To this end, my monthly rent has

Exxon Company, U.S.A.
 Page 3
 January 24, 1985

more than doubled as it was averaging \$2,200 per month in 1977 through 1978 and is currently \$4,418 per month, payable in cash as the old method of cents per gallon. In addition I understand, per your outline, that my new lease, effective if desired on November 1, 1985, will be for three years with a \$450 per month increase the first year. Then on each anniversary date within the three years, a probable \$300 per month will be added. This would bring my rent up to \$5,468 per month by November 1, 1987.

- c. I further understand that all stations you expect to keep as Exxon representation and which you said mine is one will be demolished and rebuilt to a new image, possibly as a convenient store with numerous self-serve islands and possibly bays.
- d. The outlay of capital, as mentioned in Item c, for myself and many other dealers, is naturally prohibitive.
- e. Your utmost thoughts in recent years seems to have been centered on dealer pricing. Key competition is to be surveyed and yet our key competition is Exxon's company stations, coupled with necessitated higher prices due to rent ~~go~~ging.

From a moral standpoint, I feel you have been extremely unfair with your methods in dealer relations. But for the hand of God, I would have been bankrupt and gone long ago which seems to be your goal. To this end, I cannot imagine anyone in your organization being a Sunday, or whatever, church goer and then fornicating your fellow man the balance of time. If so, perhaps the day will come to rectify same.

In summary, let me say that I know this has been extremely long, as it was intended. In fact, it could have been much longer.

I would appreciate your immediate response in the handling of my request, either by purchase or that of a new dealer.

Exxon Company, U.S.A.
Page 4
January 24, 1985

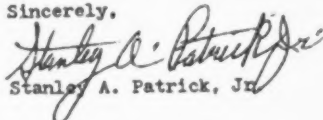
I am not in a position to sustain much more economic hardships and I would presume, that if nothing else, you too would desire such a change.

My investment costs, sweat, and lifeblood are as important to me as is your billion-dollar structure.

A quick purchase agreement is desired.

I look forward to your reply in person or by return mail.

Sincerely,


Stanley A. Patrick, Jr.

SAP:np

cc: Mr. Dan Lundberg
The Honorable Charles E. Bruneau
House of Representatives
United States Department of Energy
Bayou State Service Station Dealers' Assoc.
The Honorable Robert Livingston
The Honorable Corrine "Lindy" Boggs



GENERAL DE GAULLE & SANDRA
New Orleans



FLORENCE & GENERAL DE GAULLE
New Orleans
New Co-Op



LOYOLA DRIVE - Kenner

Exxon

1.5

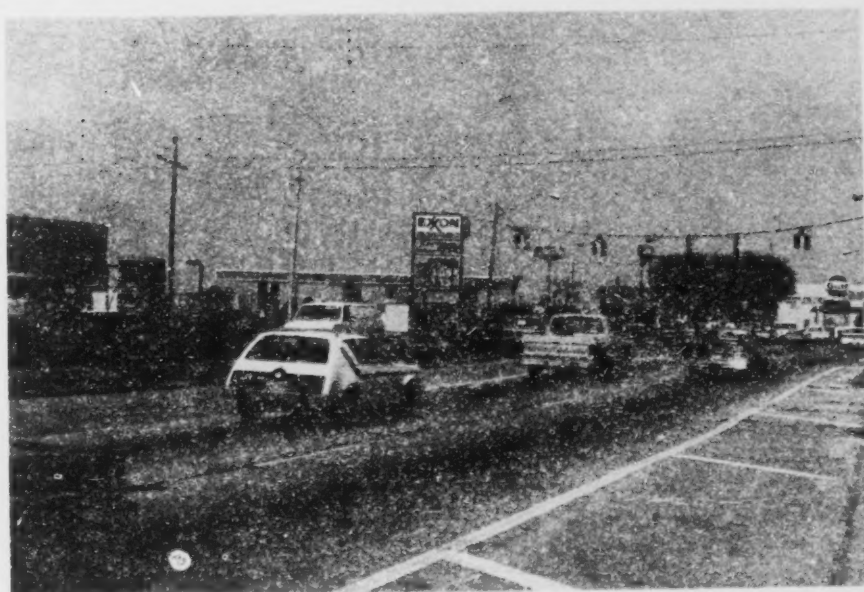
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$f_{\text{max}} = \frac{1}{2\pi} \sqrt{\frac{1}{L(C_1 + C_2)}} = \frac{1}{2\pi} \sqrt{\frac{1}{0.0001(0.00000015 + 0.00000015)}} = 10000 \text{ Hz}$	$f_{\text{min}} = \frac{1}{2\pi} \sqrt{\frac{1}{L(C_1 + C_2)}} = \frac{1}{2\pi} \sqrt{\frac{1}{0.0001(0.00000015 + 0.00000015)}} = 10000 \text{ Hz}$
$Q = \frac{1}{R} \sqrt{\frac{L}{C_1 + C_2}} = \frac{1}{10} \sqrt{\frac{0.0001}{0.00000015 + 0.00000015}} = 100$	$Q = \frac{1}{R} \sqrt{\frac{L}{C_1 + C_2}} = \frac{1}{10} \sqrt{\frac{0.0001}{0.00000015 + 0.00000015}} = 100$

姓名	性别	出生年月	民族	籍贯	文化程度	职业	工作单位	住址	联系电话	备注
王德胜	男	1952.10	汉族	山东烟台	高中	教师	烟台二中	烟台莱山区	3361111	
李国强	男	1958.05	汉族	河南郑州	大学	工程师	郑州铁路局	郑州金水区	5566777	
张为民	男	1965.12	汉族	江苏苏州	初中	工人	苏州纺织厂	苏州沧海区	8899000	
赵子龙	男	1970.03	汉族	四川成都	高中	学生	成都一中	成都武侯区	2233444	
陈永年	男	1975.08	汉族	广东广州	大学	医生	广州第一医院	广州天河区	6677888	
周小华	女	1980.01	汉族	浙江杭州	高中	售货员	杭州百货公司	杭州西湖区	9900111	
吴大伟	男	1985.06	汉族	湖北武汉	初中	工人	武汉钢铁厂	武汉青山区	4455666	
孙丽娟	女	1990.09	汉族	福建厦门	小学	学生	厦门实验小学	厦门思明区	7788999	

Pegler Cost

Land	Wagon Including Tax
	Regular Leaded - 1.052
	Regular Unleaded - 1.077
	Premium Unleaded - 1.147



CLEARVIEW & W. NAPOLEON
Metairie



VETERANS & WILLIAMS - Kenner



I-10 & WILLIAMS - Kenner



INVOICE

Shell Oil Company

AMT TO

DRIVER
HIPPING ORIGIN

KENNER, LOUISIANA

117713

REFERENCE NO.

SHELL TRUCK

S2-12 BL 512363

HIPPED TO

D H USNER

00 J48968

6201 S CLAIBORNE
NEW ORLEANS

LA 70125 13

COUNTY - 071

D H USNER

DAN'S UNIVERSITY SHELL

6201 S CLAIBORNE

NEW ORLEANS

214-02

LA 70125

WHEN REMITTING REFER TO

INVOICE NO. CUSTOMER NO. INVOICE DATE

142968 21765653317 02/27/85

CUSTOMER P.O. NUMBER

NONE

SOLD TO (Same as SHIPPED TO unless otherwise shown)

PREIGHT	FOR	TRANSP	VOL TENDER	CAR CAPACITY	CAR/TRUCK NUMBER	QO	SUMMARY NO	ORDER NO
40	50000	02646			50202	02045		

QUANTITY	PRODUCT NAME - DESCRIPTION	PRODUCT CODE	QUANTITY LOADED		QUANTITY BILLED		PRICE		AMOUNT	
			GALS-100-PGGS	TEMP	GALS-100-PGGS	TEMP	\$	C	\$	C
087.0	RU 2000 REG. UNL. GASL. API 56.0	40102100	4200	81.0	414100		84900	109	351571	
089.0	SHELL GASOLINE API 59.5	40102200	1401	80.0	138200		81900	069	113186	
092.0	SU 2000 SUPER UNL. GASL. API 55.0	40104352	4200	81.5	414000		92400	1174	382536	
MONTH-TO-DATE PURCHASES EXCISE TAXES SEE BELOW			67703		Fed Tax .09		State Tax .06		Tot .35	241575

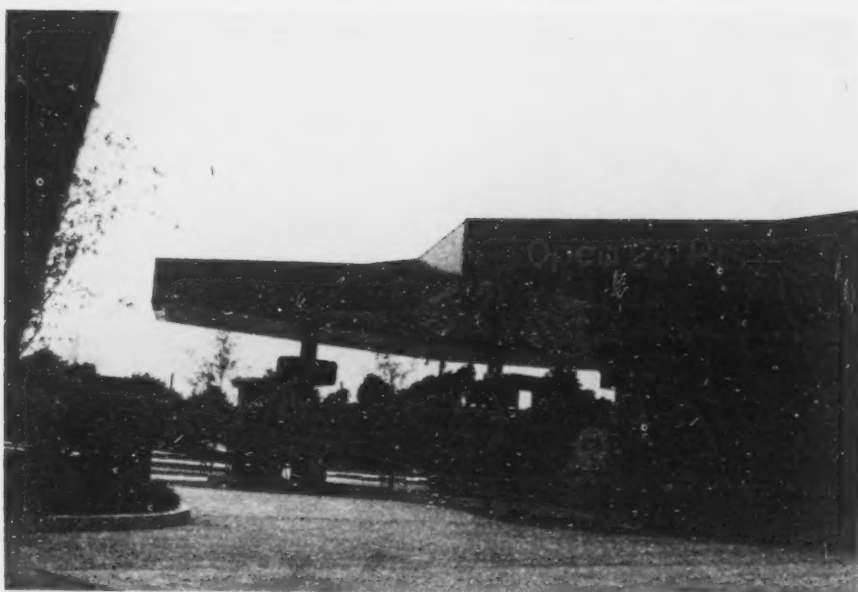
DEALER COST
TANK WAGON INCLUDING TAX
RU 2000 1.099
LEADED SHELL GAS 1.069
SU 2000 1.174

TERMS OF SALE	DISCOUNT	NET	DISCOUNT	AMOUNT	CREDIT SALE	INVOICE TOTAL
NET					1088868	
CREDIT TERMS	COD CHECK					
TAXES INCLUDED IN INVOICE						
FEDERAL EXCISE STATE EXCISE LOCAL EXCISE						
RATE AMOUNT RATE AMOUNT RATE AMOUNT						
090 86967160 154608						

DELIVERY TANK DATA		TANK CODES		PROD 1/2" WATER 1/4"	
RU (09528) (00000) (00000)	21	0			
REG (09528) (00000) (00000)	29	12	0		
SU (09528) (00000) (00000)	22	0			

REMITTANCE DETAIL		DELIVERED	
CASH		BY	
DEBIT	208225	DATE	
CREDIT	882993		
NET			
D-350			
RECEIVED PAYMENT			
TOTAL 1088868			

SIGNED: Eissa W. Yekoon DATE 27/Xp/85



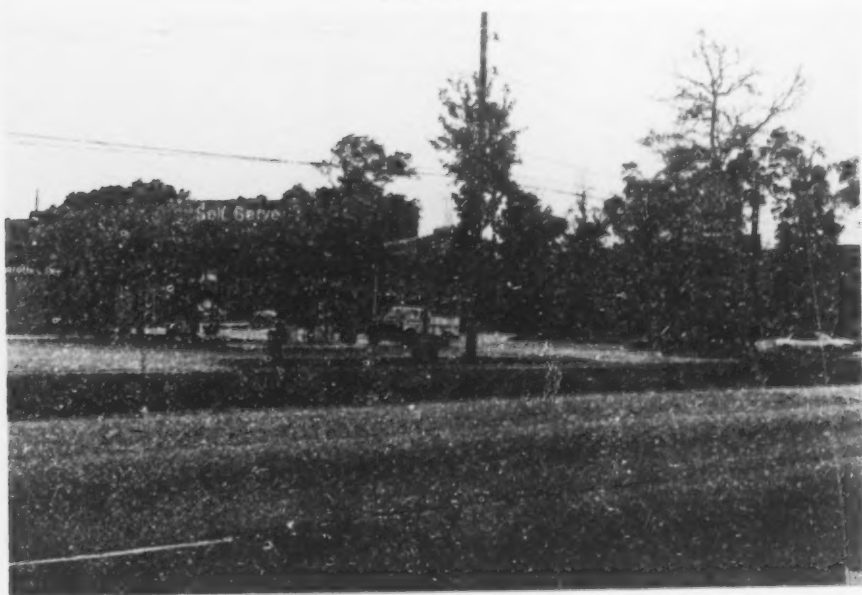
GENERAL DE GAULLE & INDIANA
New Orleans



HIGHWAY 90 & TERRY PARKWAY
New Orleans



W. METAIRIE & ROOSEVELT
Kenner



DICKORY & DOCK
Harahan



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... ARE LOADED IN GALLONS

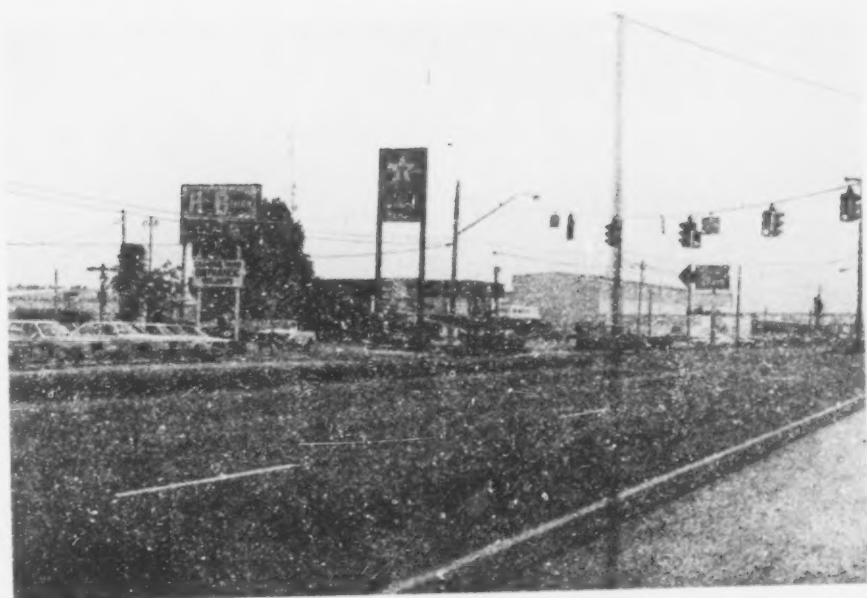
W
L 42

25-38

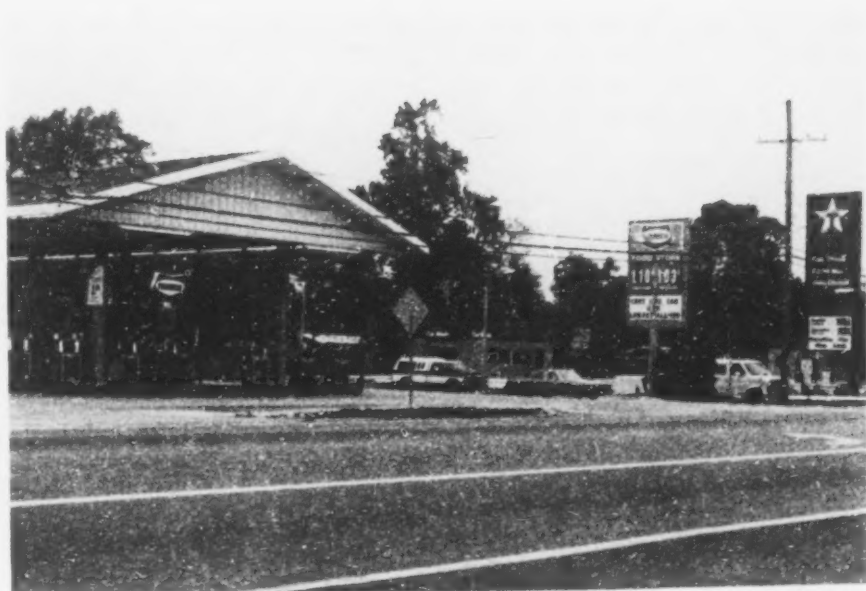
1. 53 0 60

UNLEADED REGULAR GAS 87.0

[illegible]



JEFFERSON & HORD - Harahan



HICKORY & CITRUS - Harahan



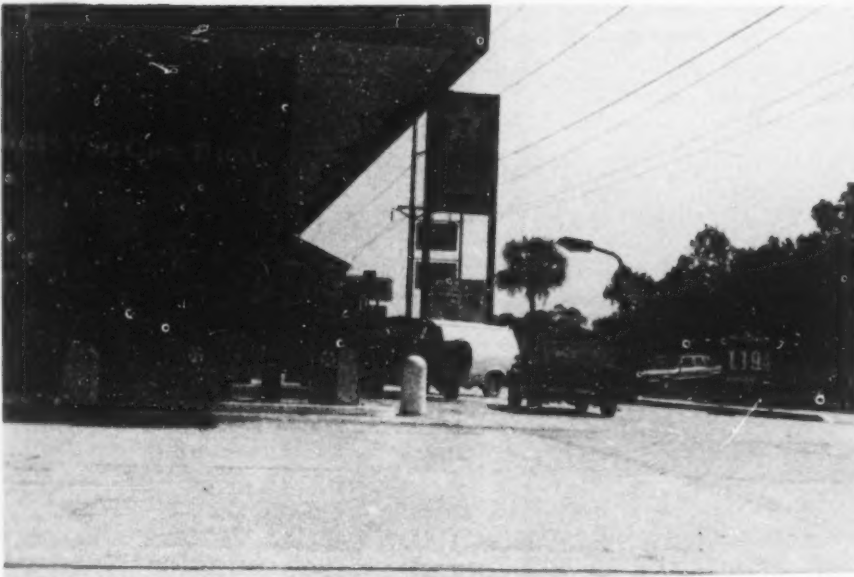
31ST & LOYOLA - Kenner



GENERAL DE GAULLE & SANDRA
New Orleans



CLEARVIEW & W. NAPOLEON
Metairie



AIRLINE & HARING - Metairie

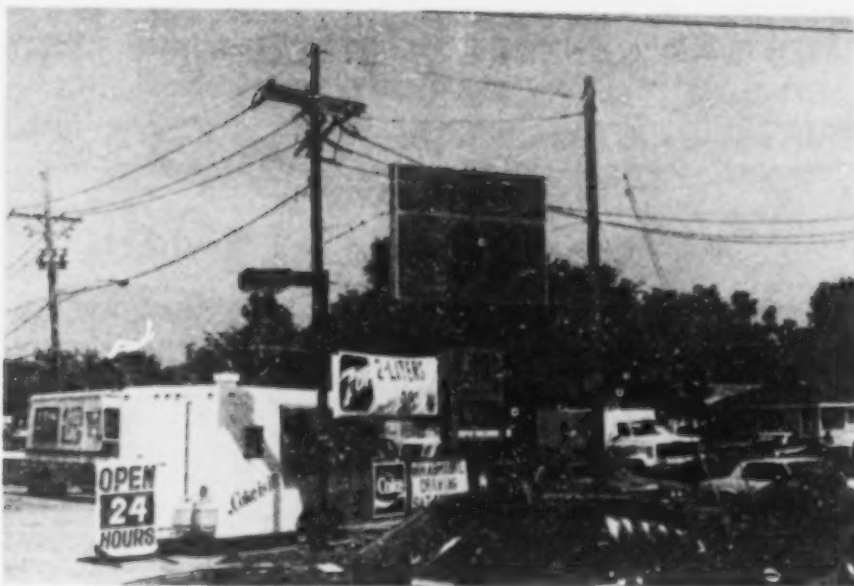
THE FOLLOWING PAGES DEPICT CERTAIN INDEPENDENT SERVICE STATIONS POSTING LOWER THAN COST PRICES APPARENTLY DUE TO MAJOR COMPANY OPERATED PRICES.



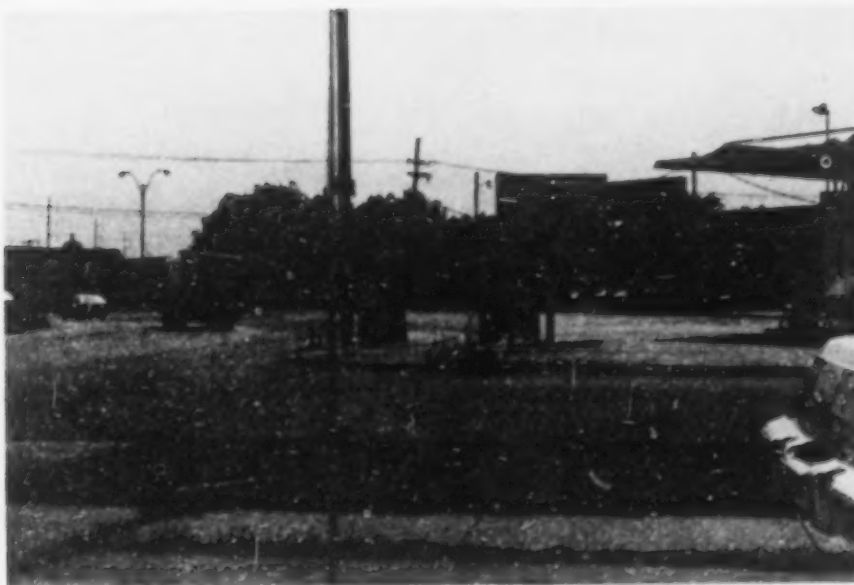
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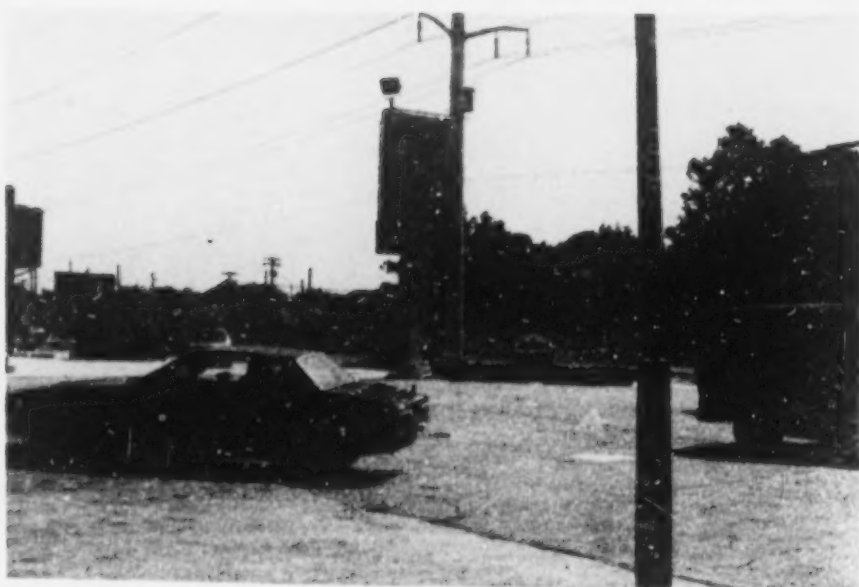
W. METAIRIE & ROOSEVELT
Kenner



CLEARVIEW & AIRLINE
Metairie



BORDEN & GENERAL DE GAULLE
New Orleans



AIRLINE & PHLOX - Metairie



31ST & LOYOLA - Kenner



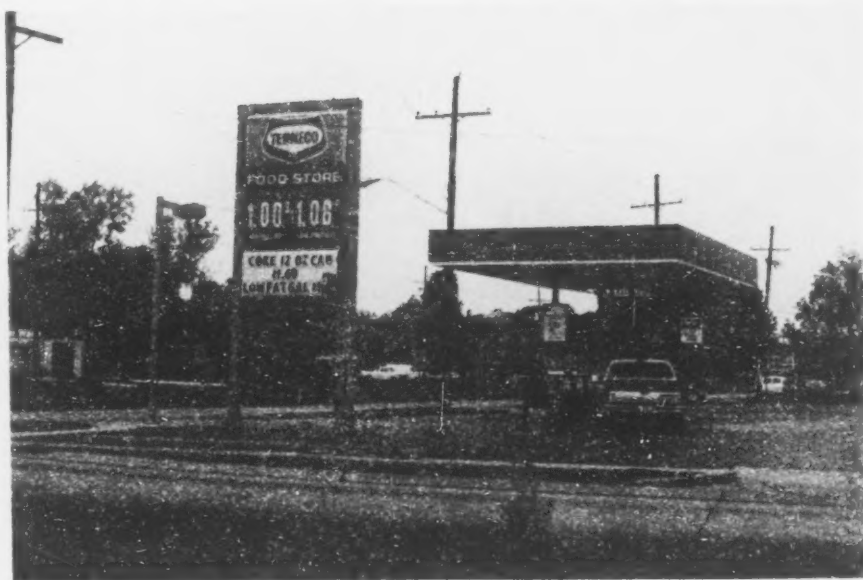
GARDEN OAKS & GENERAL DE GAULLE
New Orleans



I-10 & LOYOLA - Kenner



GENERAL DE GAULLE & MAC ARTHUR
New Orleans



W. METAIRIE & ROOSEVELT
Kenner



31ST & LOYOLA - Kenner



HICKORY & CITRUS - Harahan

Mr. MAVROULES. Thank you very much, Mr. Patrick. And to conclude this panel we have asked Mr. Jack Houston, to please proceed.

TESTIMONY OF JACK W. HOUSTON, EXECUTIVE VICE PRESIDENT, GEORGIA ASSOCIATION OF PETROLEUM RETAILERS, ON BEHALF OF NATIONAL COALITION OF PETROLEUM RETAILERS, ACCOMPANIED BY JERRY M. FERRARA, EXECUTIVE DIRECTOR, NEW JERSEY GASOLINE RETAILER'S ASSOCIATION

Mr. HOUSTON. Thank you, Mr. Chairman. I do appreciate the opportunity to speak on behalf of the National Coalition of Petroleum Retailers.

I would ask, of course, that the entire statement by our group be admitted into the record along with all the exhibits that Mr. Bedell made mention of in previous testimony. Our attempt was to provide you with what we thought was the most valuable portions of those testimonies to show the historic record that has been built for a number of years, goes back to a number of years, to establish our support for the passage of H.R. 3824.

Mr. MAVROULES. Without objection, your entire statement and all of the material with it will be included in the record.

[The exhibits referred to are being held in subcommittee files.]

Mr. HOUSTON. Thank you, Mr. Chairman. I would like to summarize now briefly what is in the statement.

From our position, H.R. 3824 should be urgently passed. It is needed today. It was needed a year, or two, or three ago. Refiners are taking over retail volumes of sales. Refiners are gaining a monopolistic advantage in retail volume sales of gasoline in the marketplace, and there are unequals in the retail marketplace today.

The refiner, in his position with economic considerations, is using profits from upstream to underwrite the cost at retail, to cover the cost, and that statement is based upon the fact that among other testimonies included in our statement, evidence is Texaco, for example, in the Atlanta market, is selling gasoline below cost, selling at retail to consumers, below the wholesale price at which they sell to their own Texaco dealers in the Atlanta market, competing with them, and that I have to submit is that if they cannot make money as they would have in selling the gasoline direct to a retail dealer, they have a profit structure in at that price and they sell below that. Then they are underwriting cost at retail without question.

Our President made a statement during a news conference several days back and he said that the United States should not allow a Government to drive private producers, producers of crude oil and so forth, out of the market in order to gain a monopolistic advantage.

Now I would ask you would our administration, would the Congress, have a dual standard in dealing with this same issue on behalf of the small business people of this country, particularly the gasoline retail dealers? We think that statement is applicable to the situation which we are complaining about and that it supports the passage of H.R. 3824.

I would like to call to your attention the chart which was inserted in the statement of testimony and deal with some of the infor-

mation quickly as to gasoline retail distribution. I have taken DOE's own figures, analysis of the 26 companies included in that study, all of them being the top refiners of this Nation, and using their own figures in that chart which shows that 46 percent of the total gasoline refined is being sold in the retail volume.

This is broken down in the chart by wholesale volume, retail volume, direct volume being direct to consumers that they sell to, which is another question in itself of shortcutting the system by eliminating the opportunity for some of the small business to sell to those consumers while the refiners offer special deal arrangements for direct volume and then some very minor intersegment volume transfer.

When you look at the total volume here expressed as 2,043 million barrels of gasoline, 46 percent of it is sold at retail. Now when you analyze that as the chart has done, we see that as of 1983, 29.2 percent of retail volume is in fact sold through company-operated retail stations, and I submit to this committee that that is a significant portion of the marketplace and that has increased over the last several years significantly. Our statement includes a statement of the average increase running 1.6 percent annually up to 1979, then starting with the figures in 1980, 1983, that averages 1.1 percent average increase.

The moderation no doubt has to do with the fact that during that period of time when the moderation began we were making extreme efforts in the Congress, with the Congress here to obtain the relief through the divorce legislation, and that always causes a moderation in whatever activity is in the marketplace. I have represented the Gasoline Retailers of Georgia for 30 years. I can tell you personally that that's the system, that if we scream loud enough and we make our voices heard in the Congress, then conditions do soften somewhat for a period of time.

The chart that I referred to shows that if we take the same analysis, and I submit that from 1983 to this date, 1986, that the increase in the growth of the refiner's share of retail volume has substantially increased more than it does during the 3 years prior, that then we would come by projection of the same percentage growth in 1980-83 to 1983-86 of 43.5 percent of the marketplace as of today.

We are in a serious position. My personal feeling is we are at a 50-50 basis. Half the volume of retail sales is now being moved by the companies through direct operations.

It has been improperly related to a comparison that the number of company-operated retail stations is a way to measure this and that their numbers have decreased. The chart shows the decrease at 444 company-operated stations while lessee open dealers lost in the market system numbered 31,778 for the same period, and I submit to you that even though they lost 444 stations, they increased their sales by 3.2 billion gallons a year, and how did they do that? They did it by using profits from upstream to sell gasoline at retail to consumers at prices which their captive direct-supplied dealers could not sell at because of that situation.

I would like to move quickly to the fact that during the recent—

Mr. MAVROULES. We are being called for a vote, Mr. Houston. If you could wrap it up in a couple of minutes or I can call a recess for about 5 minutes and come back and take the rest of testimony? It's your call.

Mr. HOUSTON. I will do it at the pleasure of the Chair.

Mr. MAVROULES. Why don't we hold off, give us an opportunity to go vote, and we will be right back.

Mr. HOUSTON. I would like to expound on the next point very clearly.

Mr. MAVROULES. We'll be back in about 5 minutes.

[Recess.]

Mr. MAVROULES. The hearing will now resume. Sorry for the interruption. The panel would please be seated so we may continue here. Mr. Houston, do you want to go on?

Mr. HOUSTON. Mr. Chairman, thank you and I appreciate your allowing me to continue for a few moments.

I would like to go back and recall to the committee previous testimony concerning differential in price which has been one of the most serious and flagrant attempts by the refiners to gouge the public, to rip off the public through the direct supply dealers in this country, to the tune of more than \$1 billion in a 4-month period, and I think this committee would have a keen interest in studying the real possible damage that has been done not only from the financial point of view of an in excess of \$1 billion ripoff during the period of time in which refiners held up the price to their direct supply dealers 10, 15, 20, 25, 26 cents a gallon above the prices they charged to other retailers who were competing in the marketplace, and for example, I have one dealer that had one, same brand, Chevron dealer, had a Chevron station 700 feet away who had that advantage, 16 cents a gallon in price, and it allowed him to sell on the street 16 cents a gallon under him, and I suggest that ripoff needs special attention not only to the amount of dollars that were involved that the consumers had to pay. Some dealers sacrificed portions of that structure of profit to try to survive during the period of time, and I think we need to look further and deeper into was it a conspiracy among these refiners who did this for the purpose of further elimination of the independent branded and unbranded retail dealers in the market system?

And to further conclude my comments to you, I would call attention to the addendum which I have submitted, a one-page addendum with attachments concerning some excerpts from a transcript of a meeting between Standard Oil Company officials—two officials, and one labor contract dealer. Earlier this year this took place, and I would like to read this into the record if I may. It's only one page.

Mr. MAVROULES. Please.

Mr. HOUSTON. The name "Sherwood" is the labor contract dealer. The name "Jim" and "Stan" are the Standard Oil representatives, company officials.

SHERWOOD. Well, ya'll really busted my bubble last week when I got your letter, Jim. I didn't expect it, I'll be honest with you.

JIM. When Sohio came in here they wanted to do it right then but the Gulf people that were here continued to let everybody go until contracts were up. If they had their way about when they came in here February 2 last year, they would have can-

celed because they could legally do it. They are the new company, they sent everybody letters telling them when their contract runs out it would be * * * but now contract runs out. It's everybody, it's not just you, they did 18 in Florida last week, they did last month, took over, how many in Mobile?

STAN. Six.

JIM. Six in Mobile. They're doing it, they're taking over all of South Carolina. Five this month in South Carolina. They are doing it everywhere. With Sohio that is the way of business, though. Everything they've got, they run themselves. Nothing that you have done. Nothing that anybody's done. That's the way it's going to be done now.

SHERWOOD. So you're basically telling me they're going to take over all of them here in Atlanta?

JIM. That's exactly right.

SHERWOOD. This year?

JIM. This year. As they come up. I've got a schedule right here. That's the dealer one. We're canceling dealer contracts, too.

JIM. I've got no choice, I've been given, my job is to company operate every location we've got in Atlanta. That's Pete's job, everything in the Southeast, and he's got no choice. There's nothing else he can do.

I might comment to the committee, Pete Riley is the top management for Standard Oil in Atlanta region, southeastern region.

JIM. I'm sure if Gulf had stayed in you would have . . . I'm talking as an ex-Gulf person, and now with Sohio. I was given not a goal, it was a demand when contracts come up you take them. They got me a list and they've got it marked when to give the letter, 90 days before.

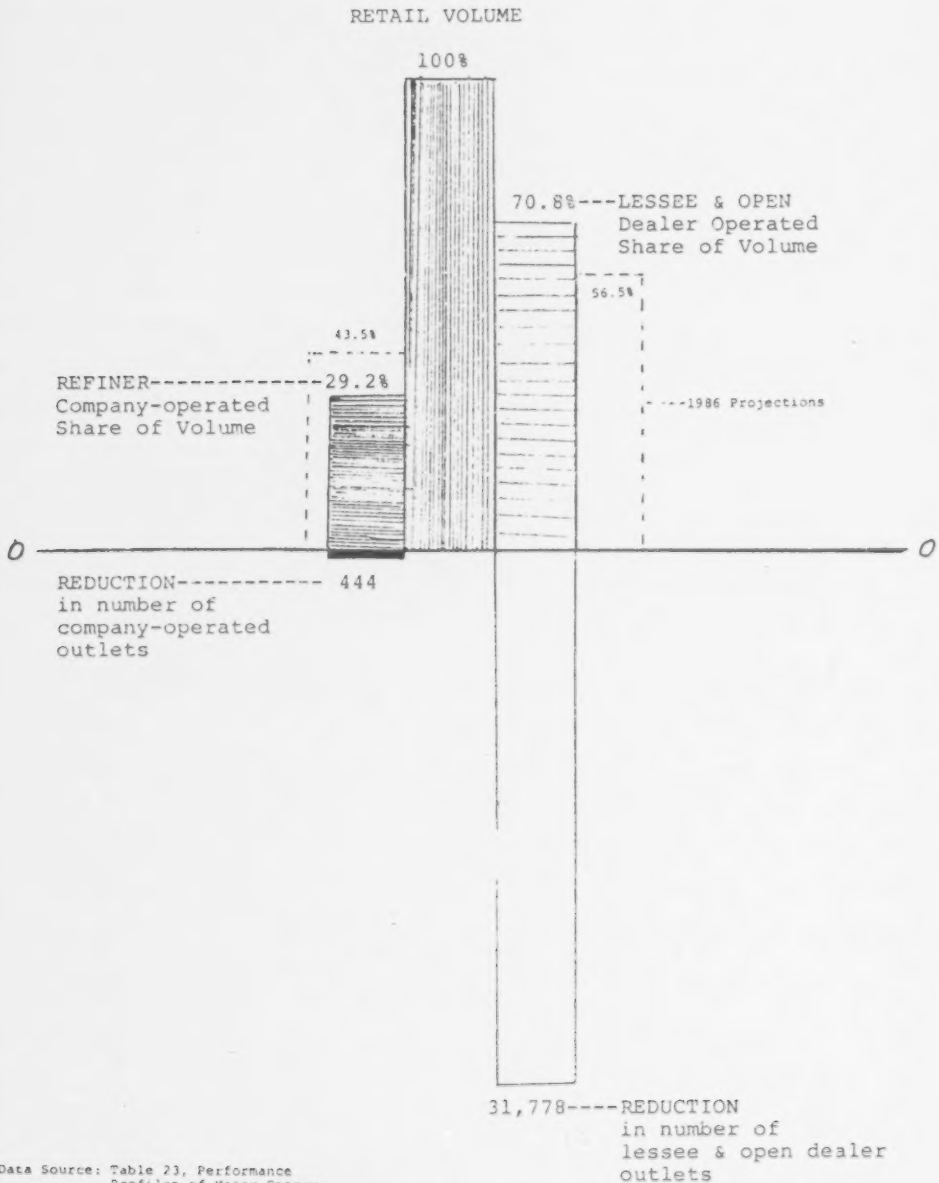
Mr. Chairman, I submit that wraps it up. That's where we are today. We're on our way out.

[Mr. Houston's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF JACK W. HOUSTON, EXECUTIVE VICE PRESIDENT, GEORGIA
ASSOCIATION OF PETROLEUM RETAILERS, ON BEHALF OF NATIONAL COALITION OF PE-
TROLEUM RETAILERS

GASOLINE DISTRIBUTION "RETAIL" / 1983

Testimony NCPR/April 1986
H.R. 3824



Data Source: Table 23, Performance
Profiles of Major Energy
Producers - 1980-81 / DOE

I am Jack W. Houston, Executive Vice President, Georgia Association of Petroleum Retailers. This Statement is the Position of the National Coalition of Petroleum Retailers, (NCPR).

NCPR represents four of the country's oldest and largest statewide trade associations whose memberships are comprised of independent small business retail gasoline service station operators.

We are: Service Station Dealers Association of Michigan, Inc.; New Jersey Gasoline Retailers Association, Inc.; Texas Service Station Association; and the Georgia Association of Petroleum Retailers, Inc.

Mr. Ferrara of the New Jersey Association will assist in presenting testimony and responding to questions.

We thank you for allowing us to update our long standing effort on behalf of the Nations' gasoline retail dealers. The objective, to stop unfair anticompetitive marketing practices of refiners who sell motor fuels to consumers through "company-operated" retail gasoline outlets.

H.R. 3824 deserves immediate passage. We urge its passage.

The need for passage of the Motor Fuel Sales Competition Improvement Act is factually supported. There has been a major decline in the share of gasoline sold by lessee and open dealers and a sharp increase in gasoline sold by refiners in company-operated outlets.

OPEN DEALER - a term that applies to dealers who own their properties or who control a lease with a third party.

The latest data, published in 1985, revealed that gasoline sold by refiners in company-operated outlets INCREASED 38.4%, 1980-1983. During the same

period lessee and open dealers' share of gasoline sold DECREASED 19.5%. [Source, DOE/EIA-0206(83)/1 Performance Profiles of Major Energy Producers, 1983]

Translated, the percentages reveal that refiner sales in company-operated retail outlets INCREASED 76.9 Million barrels (3.2 Billion gallons). This brings the refiners company-operated outlets share of the market to 29.2% of retail volume sales.

Loss of sales volume by lessee and open dealers during the same period was twice that much, 6.4 billion gallons.

During the same period, 31,778 lessee and open dealers were lost from the marketplace (25.9%). The untimely, unnatural, and premature substantially greater mortality rate for lessee and open dealers compared to only a loss of 5.0% of refiner outlets is obviously related to unfair anticompetitive marketing schemes of refiners. Refiners are no more efficient than the dealers...they just use their advantage of upstream profits to sell at lower prices and in greater volume.

Previously reported data revealed the volume of gasoline sold by refiners in company-operated outlets INCREASED 103%, 1972 - 79. [Source, DOE -Report 5, Universe Estimates of Branded Motor Gasoline Sales]

Marketing strategy changes by the refiners no longer makes it reasonable to measure the forward movement of refiners into "retailing" with reference to the number of retail outlets. Share of the market is the appropriate

measurement. As I said, the 1985 data shows the number of refiner company-operated outlets decreased 5.0% while volume of sales increased 38.4%. Lessee and open dealers decreased 19.5% the very same percentage decline the dealers experienced in volume of sales.

It cannot be successfully argued by refiners that wholesalers picked up the lost volume of sales from the dealers. During the same period (1980-83) wholesalers' volume of sales decreased 0.1%.

Earlier data, for the period 1972-79, showed refiner growth in market share on average at about 1.6 percentage points a year. The newest data (1980-83) indicates a continued growth in gasoline sold in refiner company-operated outlets of about 1.1 percentage points a year.

The moderation very well could have been caused by dealer efforts to gain Congressional relief in the later years. Nevertheless, the persistent forward movement serves as a reminder that failure to stop the movement means certain death (economically) for thousands upon thousands of small business gasoline dealer operated outlets. And it means less competition and higher prices unilaterally set by the few refiners who will eventually control the entire oil industry...from well-head to the customers' vehicle tank.

These small business independent branded and unbranded retail gasoline dealers are struggling against a "Goliath". They cannot survive the on-rushing slaughter that is imminent. Congress needs to take remedial and

preventive actions to provide for an improvement in the unfair anti-competitive marketing practices of refiners.

There is further proof that refiners are engaged in marketing practices that can lead only to the substantial destruction of these small businesses.

Recent data collected and prepared exposes unfair anticompetitive refiner marketing practices that need to be cleaned-up. This data deals only with Texaco. Others are equally guilty and our claims can be factually sustained from previously submitted testimony before Congressional Committees during the past seven (7) years.

I submit as Exhibit # 1 an analysis of Texaco's marketing practices in the Baton Rouge (Louisiana) area which I prepared earlier last year. I ask that it be included in the record of this hearing as a part of our testimony.

This analysis illustrates how Texaco and other refiners engage in a variety of practices that insures economic eviction of independent branded retail dealers (and indirectly unbranded retail dealers) from the marketplace.

Of particular importance are the facts supplied by Texaco about its integration into marketing of gaso-

line in the Baton Rouge area, where now only a handful of dealers remain from a once healthy supply.

For Georgia (Atlanta Area) I am submitting previously used testimony based upon Texaco's marketing practices along with new data developed early in 1985. This provides evidence in support of the need for relief. Improvement of motor fuel sales competition is a serious matter. I ask that this material, identified as Exhibit # 2, be included in the record of this hearing.

Here we have (in Exhibit # 2) the nitty-gritty practical diagnosis of the illness (cancer of unfair marketing practices) in simple to understand form:

TEXACO IS EARNING LESS ON SALES AT RETAIL THAN
IT EARN^S AT WHOLESALE WHEN SELLING TO ITS
RETAIL DEALERS.

Even if one assumes the average sales of 100,000 (in Exhibit # 2) can be increased to 200,000 gallons a month without additional cost to Texaco, only rent or occupancy costs and labor are directly affected. Tax at retail is insignificantly affected. A resulting five cents (05.0¢) a

gallon reduction in "Total LAID-IN cost" for Texaco sales at retail does not significantly alter the impossible differentials between what Texaco's wholesale price is to its dealers and the retail price at which Texaco retails the same gasoline. Small business independent retail dealers can not compete against such anticompetitive practices.

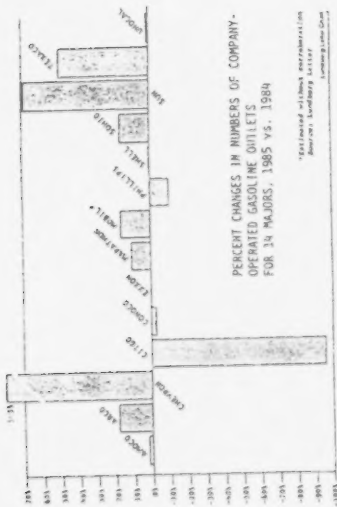
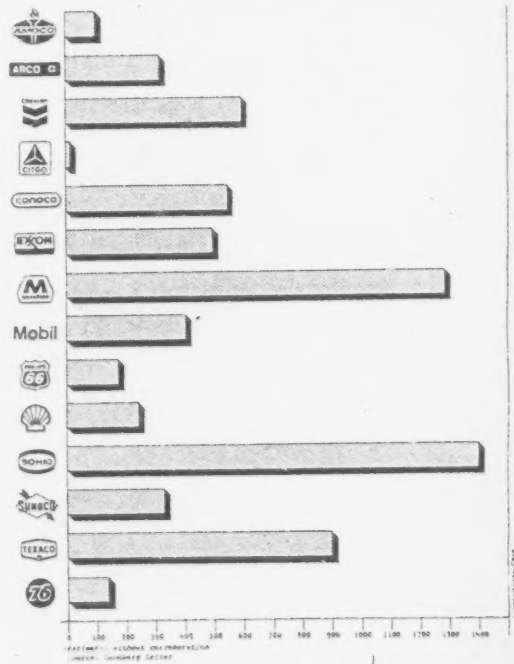
We especially support the intent of Section 3A(a)(b). We believe with minor adjustment this provision can effectively provide dual relief. Relief from the single and deadly stranglehold of refiners who charge excessively higher prices than do other refiners. Relief from refiners who even refuse to allow their own products to be purchased from others at lower prices --- see Exhibit # 3 for evidence that Chevron refuses to allow its dealers to buy Chevron product from a Chevron jobber even when a dealer can save and does pass along to his customers as much as 4.0¢ per gallon. We have filed the minor adjustment suggestion in a separate memo. We will appreciate, as will consumers, favorable action.

The Lundberg Letter, July 19th, 1985 evidences at a glance that refiner operated retail outlets are no longer "for training dealers or for market testing". They are a threat to the free enterprise system and real competition functioning in gasoline (retail) marketing.

The refiners are on a course to substantially eliminate the very existence of independent branded and unbranded retail dealers from the marketplace, using less than fair and reasonable marketing practices to accomplish their goal.

The Congress should not allow it to happen. Enactment of H.R. 3824 will protect motorists from the disaster that surely will occur if five, six, or eight refiners take substantial control of all gasoline - from the well-head to the consumers' gas tanks!

HOW NUMBERS OF COMPANY-OPERATED RETAIL OUTLETS
FOR 14 MAJOR OIL COMPANIES COMPARE IN 1985



The evidence clearly shows that structural and behavioral practices of some refiners of motor fuels require changes to protect the individual proprietor and small business person from the economically powerful refiners by imposing statutory regulations. The Congress has already seen fit to regulate the oil industry (PMPA). Enactment of H.R. 3824 is a necessary addition.

Mr.Chairman, during the past four months new and sneakingly malicious acts have been committed against lessee dealers and upon dealers supplied by the biggest of the Big Oil Companies of these United States.

The fall-out from the effect of these acts is not measurable at this early date. But based upon the furor of great concern raised by lessee dealers and open dealers across the land, the damage will be great --- including the loss of thousands more who could not sustain the injury to their businesses and survive.

You be the judge of the facts. We think you will agree that we have been kind in our claim.

For simplicity sake, I will use a nationally known and reputable weekly oil industry statistical reporting service (Lundberg Letter diary) as the basis for this testimony. However, other statistical oil industry services will bear us out on the facts. Because I am more familiar with the Georgia market I will use Georgia data to illustrate what's happened across America.

The (Lundberg) diaries show that from April, 1984, through December 6, 1985, the differential between the dealer buying price and the terminal price for branded product averaged approximately 3 to 4 cents. During this same time period, the rack price (unbranded product) has averaged approximately 1-2 cents below the terminal price.

Beginning with the diary dated January 3, 1986, the differential between the dealer buying price and the terminal price began to increase substantially.

True and correct copies of charts published as part of the Lundberg Letters dated February 21, 1986, and October 18, 1985 are attached as Exhibit #4. These charts show the nationwide trends in the wholesale buying prices of regular unleaded gasoline. The chart dated October 18, 1985, shows the consistent differential of 4 to 5 cents per gallon between the dealer buying price and the terminal branded buying price for the same product. The chart dated February 21, 1986, shows that, beginning in December, 1985, this differential increased from 4 to 5 cents per gallon to almost 15 cents per gallon in February, 1986.

In early February, 1986, I began receiving calls from dealers who buy product direct from one of the refiners. They advised me of substantial reductions in their volume of sales of gasoline as a result of competition by retailers who are also jobbers who sell at retail at competing locations. In most cases, the members reported that the jobbers are selling at retail under the same brand name as a member. In some cases, the competition was

by a jobber selling unbranded gasoline. These dealers reported that they knew these retailers, who are also jobbers in their local areas, were buying the gasoline they were selling at retail from the oil companies at a much lower wholesale price than that available to the dealers.

There is no question that the damage to the branded dealers in Georgia and across America, especially the remaining traditional service-oriented dealers supplied directly by refiners, was irreparable and substantial while the price discrimination between dealers and dealer-jobbers continued for the four months. Dealers have advised me that their business will not be able to survive at all if the refiners do not restore fairness in their marketing "pricing" practices.

Attached as Exhibit # 5 is a true and correct copy of a letter which was sent to me by a dealer member who buys his product directly from one of the refiners (Chevron). The letter was given to the dealer by a jobber in his local area when the dealer inquired whether the jobber could sell the product to him at a lower price than he was being charged by the oil company. The jobber was willing to sell to the dealer at 12 cents per gallon less than the oil company's price, but would not because of this letter. Other dealers reported similar instances. That letter tells it all. It is the second time this oil company has committed to writing that dealers can not purchase even the same product at a lower price for resale.

The last week of November, 1985, the price of crude oil began to decrease significantly and has steadily continued to decrease. The crude oil price

reflects the cost of the raw material to the oil company who refines the product. Each reduction of \$1 per barrel of crude oil results in a reduction in cost of 2.5 cents per gallon of refined product. According to Oil Daily, a national oil industry publication, crude oil prices have fallen 60% since November, 1986. Reductions have been passed through to jobber-retailers in the terminal price but have not been passed through to dealers buying direct from these refiners. As a result, there have been accusations in media news stories that dealers are not passing through their price reductions to the consumer. Further loss by lessee dealers and open dealers of sales volumes have resulted. Some dealers supplied by jobbers have paid the higher prices to jobbers enabling some jobbers to take 18¢, 20¢, and even 24¢ a gallon margin of profit - an unheard of situation in previous years.

The retail gasoline market is very competitive, and the profit margin for dealers is very small. The unjustified cost difference of 10 to 14 cents per gallon in the wholesale price has a substantial impact on the ability of dealers who must pay the higher price to compete in the retail market. The impact is most severe on dealers who must compete with retailers who are also jobbers who are receiving the price advantage because they are selling at retail under the same brand name as the dealer.

No event has occurred affecting the gasoline industry which would justify the increase in the price differential between retail dealers and retailers who are also re-distributors, either those buying at the terminal price or

at the rack price. And there is no justification for the unusually large differential between dealers and jobbers. Over the last few years, the difference between the price for gasoline delivered directly to the dealer and gasoline received by a distributor at the terminal has averaged 3 1/2 cents per gallon. This difference reflects a discount for freight charges and other redistribution allowances to the distributor for transporting and storing the product. The maximum differential that can be justified on this basis is no more than 5 cents.

Mr. Chairman, could it have been, as some refiners explained, that the fast changing reductions in crude oil prices just needed a little time to reach the public? How could this be? If the drop in crude oil could reach retailer-jobbers, as it did, how could anyone truthfully claim dealers supplied direct by the refiners at the same time from the same points of distribution were still getting the gasoline produced from higher priced crude oil?

I submit, Mr. Chairman, that the refiners wronged their "captive" direct supplied dealers and the consumers who trade with them by extracting from them an excessive price totaling an estimated ONE BILLION DOLLARS during the four month period. (Note: Calculations based on DOE table 23 data, DOE Report 5 identified earlier, and an estimated average excessive adverage differential of 10¢ a gallon).

In Texas, the differential was 16¢ per gallon. In Michigan it was 16¢; In New Jersey it was 22¢; and California reported from 15¢ to 28¢. California

reported one refiner at 26.5¢ a gallon differential. That same (and the only major oil) company supplying Georgia dealers maintained the usual and customary differentials during the four month period that it had in October and November, 1985.

Oil Express, a nationwide reporting service, reported March 3, 1986 on a random survey by Oil Price Information Service that individual refiner direct supplied dealers and retailer-jobbers' price spreads were 13.76¢ gallon to 25.48¢ gallon.

According to the Lundberg Diary of March 29, 1986, the average differential in Georgia was restored to only 3.43¢ per gallon (regular leaded). We are grateful ... but the damage to dealers struggling to survive has been done. More refiner company-operated outlets and pricing practices of existing company-operated outlets will soon push them the rest of the way out of the marketplace unless Congress takes actions to prevent it!

A second and serious development gives cause for urgent pleading to this committee for passage of H.R.3824 at once.

Court decisions under the Petroleum Marketing Practices Act (PMPA) requires immediate Congressional action. A few citations will provide a clear sign that supports our pleas for Congressional action:

1. Munno, Joseph J., Jr. v. Amoco Oil Company, 488 F. Supp. 1114 (D. Conn. 3-27-80)

Dealer claimed that Amoco's going from a gallonage rent to a flat monthly rent was for the purpose of driving him out of the station. On deciding the motion for summary judgment, the court said "if under the PMPA proposed changes in the lease are to be tested against a subjective good faith standard, the defendant is entitled to summary judgment. If instead the test is 'reasonableness', summary judgment is inappropriate." After much discussion of the legislative history, the court concluded that "thus, both the legislative history and the limited number of cases construing the PMPA (Cited Sexe to the contrary) support the conclusion that subjective good faith, i.e. a 'good heart' without evil intent, is all that the statute requires of franchisors." Summary judgment granted defendant.

2. Tiller, W. Fred, Jr., et al., v. Amerada Hess Corporation, 540 F. Supp. 160 (D.S.C. 11-12-81)
Section 2802(b) (3) (A) permits franchisor to nonrenew a franchise relationship when the parties fail to agree to changes or additions to the provisions of the franchise made by the franchisor in good faith and in the normal course of business and not for the purpose of preventing the renewal of the franchise relationship. Good faith means the franchisor's "subjective good faith", not the objective reasonableness of the franchisor's acts nor the "perceived" impact of those acts on any particular franchisee. Subjective intent is a matter of inference to be derived from all objective facts and evidence.
3. Palmieri, Joseph A. v. Mobil Oil Corp., 529 F. Supp. 506 (D. Conn. 1-8-82), *aff'd*, 682 F.2d 295 (2d Cir. 5-17-82)
The court rejected franchisee's contentions that § 2802(b) (3) (A) imposed a legal duty on franchisor to act in an objectively reasonable, nonarbitrary manner when dealing with its franchisees. The court reviewed PMPA legislative history and found that Congress had considered and rejected the objective reasonableness test and adopted a subjective good faith intent approach. The PMPA does not vest courts with the authority to review the objective reasonableness or arbitrariness of each franchise agreement. Rather, the PMPA protects franchisees only in situations where the franchisor acts with evil motive or discriminates selectively against the franchisee with the intent to terminate or not renew the franchise.
4. Meyer v. Amerada Hess Corp., 541 F. Supp. 321 (D.N.J. 6-7-82)
The court applied the provisions of § 2802(b) (3) (A) in refusing to issue injunctive relief to prevent franchisor from raising franchisee's rent pursuant to a new method of rent calculation. The court found that the new formula was devised in good faith, in the normal course of business and was based on sound business reasons. The court was not convinced by franchisee's evidence that franchisor acted in bad faith merely because since 1973 franchisor had not installed lessee-dealers in new or surrendered stations. Also, franchisee's inability to make a profit under the new formula does not establish improper motive.

(underscoring added for emphasis)

The most recent (legal) development was the dismissal of the Farm Stores, Inc. vs. Texaco Case Appeal to the Supreme Court of the United States (October Term, 1985). Dismissal was requested after Farm Stores and Texaco reached an amicable resolution of their problem.

This case provides insight how the oil companies are moving aggressively to take over retailing and sidestep the intent of Congress to provide for reasonable fairness when refiners are dealing with their lessee and open dealers.

Using a nomenclature "Contract Dealers" for persons who operate the growing number of the newest stations (Pumper locations), this term really applies

to "refiner company-operated" retail outlets. Usually, it is a self-serve unit with a food-store and with no mechanical products or services available on the property. The company controls (sets) the price on retail pumps. The contract dealer is paid by the hour for handling gasoline customers and accepting payment. The contract dealer is said to have no rights under PMPA.

With the Appeal stopped ... the decision left standing most conveniently for the refiners is the reversal by the District Court's judgment. The results is a green light for refiners to force more dealers out and expansion of the Contract dealer concept. I would urge each member of this Committee and the entire Congress to read carefully the full reproduced brief originally filed (and withdrawn). It is attached as Exhibit # 6.

To read this exhibit is to become well educated to the circumvention of PMPA and the wide open door to move more freely toward the final step to take over retailing from the Nations' small business gasoline retail dealers. And, the significance of passage of H.R.3824 will be more certain to you.

Mergers, pullouts, and acquisitions have further contributed to damaging anticompetitive elements. They have destroyed many and are about to force even more retail dealers out of the marketplace. See Exhibit #7.

The recognized leader in company-operated outlets (Sohio-now Standard Oil Company) was allowed to purchase the spin off of Southeastern States' Gulf

stations from Chevron and became even larger. They are now aggressively moving toward expansion of company-operated stations just purchased according to open dealer complaints. The company has given notice it wants to cut off supply to the open dealers.

The Federal Trade Commission failed (we believe) to follow its own normal rules and regulations in the Chevron-Gulf merger. Exhibit # 8 attached explains the failure of FTC to follow procedure prescribed in Commission rules to make a proper determination for approval of Sohio's purchase of Gulf assets. The bottom line effect of FTC failure to protect the dealers in the merger required sale is a contribution to refiners' take over of retailing.

An open and free market prevails only when competitors are able to survive because of their skills, efficiencies and services.

In summary, refiners engaged in retailing are "predators" and they are unnatural and unfair "competitors" because the refiners:

1. Control and arbitrarily fix the wholesale prices paid
by their competitors;
/
2. Control available sources of supply to competitors;
3. Fix occupancy cost of outlets operated by competitors;

4. Require unproductive operating hours costs that competitors must bear;

5. Assess other operating demands that increases their competitor's costs; and

Refiners then fail to recover those same costs when pricing gasoline on retail pumps at their company-operated outlets.

In conclusion, so that the record for H.R. 3824 has the benefit of testimony prepared and submitted in support of earlier legislation introduced to correct unfair competitive marketing practices of refiners, we respectfully ask that Exhibits # 9 through # 15 also be included in the official record of this hearing on H.R.3824.

Thank you

NATIONAL COALITION OF PETROLEUM RETAILERS, INC.

Washington Representative: Jere Glover
1725 K Street, N.W., Suite 308
(202) 775-1235

Coalition Members:

Jack W. Houston, Executive Vice President
Georgia Association of Petroleum Retailers
Suite D
955 W. Blairton Road
Stone Mountain, Ga. 30083

Jerry M. Ferrara, Executive Director
New Jersey Gasoline Retailers Association, Inc.
66 Morris Avenue
Springfield, NJ 07081

Charles E. Shipley, Executive Director
Service Station Dealers Association of Michigan, Inc.
Suite 111
24133 Southfield Road
Southfield, Michigan 48075

William N. Ligon, Executive Director
Texas Service Station Association
P.O. Box 9445
Austin, Texas 78766

SUMMARY OF ATTACHMENTS/NCPR STATEMENT ON H.R. 3824

- Exhibit # 1. "An Analysis of Texaco's Marketing Practices in The Baton Rouge Area and Their Impact on Herbert Cason" (1985)
- Exhibit # 2 "Hard Evidence" Surveys, 1984 and 1985, of Texaco's Atlanta Co-operated pumper retail stations showing Texaco's earning less on sales at retail than Texaco earns on sales at wholesale to its retail dealers.
- Exhibit # 3 Letter 10-30-81 from the law offices of Pillsbury, Madison and Sutro (For Chevron) to Robert S. Jones, Esq. ("...The supply contract requires that they purchase directly from Chevron all Chevron gasoline necessary to serve demand for Chevron gasoline...").
- Exhibit # 4. "Falling Prices Bedevil Wholesale Gasoline Price Competition" charts, Lundberg Letter February 21, 1986 and October 18, 1985.
- Exhibit # 5. Chevron Letters to Chevron Jobbers, dated February 12, 1986 ... re: prohibiting dealers from buying from jobbers instead of refiner¹ at lower prices offered by jobbers.
- Exhibit # 6. "Petition For Writ of Certiorari to The Supreme Court of the United States - Farm Stores v. Texaco, October, 1985 Term ... (withdrawn from court because of settlement).
- Exhibit # 7. "Graphic U.S. Outline Of Individual Company Pullouts (Arco, Amoco, Exxon, Mobil, Phillips, Shell, Sunoco, Texaco, and Unocal) published by the Lundberg Letter (dated May 17, 1985 and May 24, 1985) ... sharp display of changes that obviously have affected great numbers of gasoline dealers.
- Exhibit # 8 House of Representatives Subcommittee Chairman on Commerce, Transportation and Tourism's October 29, 1985 letter to Federal Trade Commission, and FTC response to the Chairman's September 4, 1985 letter regarding Chevron - Gulf Merger FTC require sale of certain assets (sold to Sohio).
- Exhibit # 9. October 20, 1976 House Report No. 94-1762 (Union Calendar No. 882) "Problems of Small Retail Petroleum Marketers", findings and recommendations, Chapters IV & V.
- Exhibit #10. ALLVINE/HOUSTON/PHILLIPS 1980 Report entitled "The Case For Legislative Relief From The Impending Destruction Of Small Business And Competition In The Gasoline Industry".

Exhibit #11. "27 Questions & Answers, S.40 and H.R. 1755 in 98th Congress, S.40 & H.R. 1362 in 97th Congress, "Small Business Motor Fuel Marketer Preservation Act".

Exhibit #12. Hearings (1980) - Serial No. 96-196, H.R. 6722 "Small Business Motor Fuel Marketer Preservation Act".

a) Testimony National Federation of Independent Business, H.R. 6722, 1980 ("... we polled divorcement twice and divestiture once. All three times the membership voted in favor of divestiture or divorcement in the gasoline retail marketing...").

b) Prepared Statement of Jack W. Houston, Acting Executive Director, on behalf of Service Station Dealers of America.

Exhibit #13. Hearings (1981), H.R. 1362 Small Business Motor Fuel Marketer Preservation Act of 1981

a) Prepared Statement of Jack W. Houston, Chairman, Government Affairs Committee, Service Station Dealers of America.

b) Testimony, John J. Flynn, (Utah) (See especially beginning on page 514, "Retail Divorcement").

Exhibit #14. Hearings Before the Committee on the Judiciary on S.S. 326, July 30 and October 21, 1981 (Serial No. J-97-37) re: Divorcement of Motor Fuel Service Stations -

a) Page 266 through page 278 - "Prepared Statement of Jack W. Houston".

b) Page 257 and 308 through page 318 - "Prepared Statement of Fred C. Allvine".

c) Page 283 through 290 "Appendix B" for Statement of Position SSOA by Jack W. Houston, Chairman, Government Affairs Committee on The Final Report on The State of Competition in Gasoline Marketing ...".

d) Page 291, letter Jerry S. Cohen to Congressman Dingell re: H.R. 6722 concerning issues relating to available remedies under the Robinson-Pattman Act - Case law reference including that "...transfer from a parent corporation to its wholly-owned subsidiary corporation ... cannot be considered sales for Robinson-Pattman Act purposes" ... etc..".

e) Page 294 through 304, including "Finding ... Special Survey ... February 1981", Appendix B(2), Charts, etc. showing evidence that refiners reserved 75.4% of self-service stations for their own (employee or contract dealer) operations, etc., A

comparison of Maryland prices to other states and prepared Statement of Tracy L. Stanton (now President of SSDA).

Exhibit #15 Hearings Before The Committee on The Judiciary On S.40, March 14, 1984, (Serial No. J-98-99) re: The Small Business Motor Fuel Marketer Preservation Act - pages 21 - 27, Statement by Jack W. Houston on behalf of The Georgia Association of Petroleum Retailers, Inc., and the Service Station Dealers of America, (1984), etc.

ADDENDUM TO NCPR TESTIMONY/APRIL 17, 1986

Here's (excerpts of) what Standard Oil Company (Sohio) (B.P.) is doing in the Southeast with all Gulf purchased locations ... according to an actual transcript of a conversation two Standard Oil Representatives had earlier this year with one of its labor contract dealers: (Sherwood is the labor contract dealer and Jim and Stan are Standard employees.)

...Sherwood: Well, ya'll really busted my bubble last week when I got your letter, Jim. I didn't expect it, I'll be honest with you.

Jim: When Sohio came in here they wanted to do it right then but the Gulf people that were here continued to let everybody go until contracts were up. If they had their way about when they came in here February 2nd last year, they would have cancelled because they could legally do it. They are the new company, they sent everybody letters telling them when their contract runs out it would be but now contract runs out. It's everybody, it's not just you, they did 18 in Florida last week, they did last month, took over, How many in Mobile?

Stan: Six.

Jim: Six in Mobile. They're doing it, they're taking over all of South Carolina. Five this month in South Carolina. They are doing it everywhere. With Sohio that is the way of business tho. Everything they've got, they run themselves. Nothing that you have done. Nothing that anybody's done. That's the way it's going to be done now. ...

...Sherwood: So, you're basically telling me they're going to take over all of them here in Atlanta?

Jim: That's exactly right!

Sherwood: This year?

Jim: This year! As they come up. I've got a schedule right here. That's the Dealer one. We're cancelling Dealer Contracts, too. ...

...Jim: I've got no choice, I've been given, my job is to company operate every location we've got in Atlanta. That's Pete's job, everything in the Southeast, and he's got no choice. There's nothing else he can do. ...

...Jim: I'm sure if Gulf had stayed in you would have ... I'm talking as an Ex-Gulf person, and now with Sohio. I was given not a goal, it was a demand when contracts come up you take them. They got me a list and they've got it marked when to give the letter, 90 days before. ...



GULF PRODUCTS DIVISION
BP Oil Inc.

P.O. BOX 7117 ATLANTA, GEORGIA 30357-0117

TELEPHONE (404) 897-7820

February 28, 1986

CERTIFIED MAIL

Mr. J. Sherwood Daniel
Save-More Foods
P. O. Box 170
Stone Mountain, Georgia 30086

Re: 3905 Lawrenceville Highway
Lilburn, Georgia

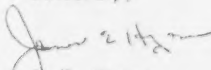
Dear Sherwood:

Pursuant to our contracts concerning the subject location, dated June 6, 1983, copy attached, Gulf Products Division has elected to exercise its right of termination called for in its Lease, Paragraph 2 (A), and Agreement for Supply of Personnel, Paragraph XIII (A).

Due to Gulf's desire to cancel our Lease and Agreement for Supply of Personnel with J. Sherwood Daniel, it would be appreciated if you would make the necessary arrangements to vacate the property on or before June 5, 1986. We will be willing to purchase your stock and equipment at fair market price if you desire.

If you have any questions concerning this matter, please feel free to contact me at 404-897-7755.

Sincerely,


J. E. Hyams
District Manager

JEH/gl

Attachments

cc: R. S. Lee

Gulf Oil Products Company

D. M. HAYES
MANAGER - OPERATIONS AND RELATIONS

January 7, 1985

W. C. B. 2001
PRODUCTION TA 17252Assignment of Lease and
Agreement for Supply of
Personnel

Mr. J. Sherwood Daniel
P.O. Box 170
Stone Mountain, GA 30086

Dear Sir:

Please refer to the following Leases and Agreements for Supply of Personnel, and any related agreements (collectively the "Contracts"), between you and Gulf Oil Corporation ("Gulf"):

(1) Lease and Agreement for Supply of Personnel, each dated June 6, 1983, covering the self-service gasoline facility at 3905 Lawrenceville Hwy., Lilburn, GA.

(2) Lease and Agreement for Supply of Personnel, each dated December 21, 1983, covering the self-service gasoline facility at 2966 State Hwy. 317 and I-85, Suwanee, GA.

In order to comply with a divestiture order of the Federal Trade Commission arising out of the acquisition of Gulf by Chevron Corporation, Gulf has agreed to sell to BP Oil Inc., an Ohio corporation ("BP Oil"), the following assets: (1) Gulf's Alliance, Louisiana refinery, together with all dedicated pipelines, (2) Gulf's Lake Charles, Louisiana calciner and (3) all of Gulf's marketing assets in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

BP Oil is a wholly owned subsidiary of The Standard Oil Company, an Ohio corporation ("Sohio"). Sohio is a major oil company with substantial crude oil reserves and through this acquisition will be expanding its business of refining and marketing petroleum products into the southeastern United States.

Under the purchase and sale agreement between Gulf and BP Oil, Gulf will also assign to BP Oil all of Gulf's



A DIVISION OF GULF OIL CORPORATION

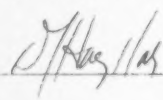
contracts relating to the assets being sold. BP Oil hopes to continue the business relationship you now have with Gulf and will expressly assume all of Gulf's obligations under the Contracts. Gulf will also remain fully liable for the performance by BP Oil of all of its obligations under the Contracts.

Gulf would appreciate your consent to the assignment by Gulf to BP Oil of the Contracts referred to above. In order to fully protect your interests, your consent will be subject to all of the following terms and conditions:

1. The assignment of the Contracts by Gulf to BP Oil shall occur on or before June 30, 1985; and
2. BP Oil shall assume in writing, as of the effective date of the assignment, all of Gulf's obligations under the Contracts; and
3. Gulf shall not be released from any of its obligations under the Contracts and shall remain fully liable for the performance of those obligations.

If you are willing to consent to the assignment of the Contracts by Gulf to BP Oil subject to the above terms and conditions, please so indicate by executing a copy of this letter and returning it to Gulf.

GULF OIL CORPORATION

By 

The undersigned hereby consents to the assignment of the Contracts referred to above by Gulf to BP Oil, subject to all of the terms and conditions set forth above.

J. Sherwood Daniel

AGREEMENT FOR SUPPLY OF PERSONNEL

THIS AGREEMENT, made and entered into this 6th day of JUNE, 1983, by and between GULF OIL CORPORATION, a Pennsylvania corporation, acting by and through GULF REFINING AND MARKETING COMPANY, a division thereof (hereinafter "Gulf") and J. SHERWOOD DANIEL (hereinafter "Contractor").

WITNESSETH

In consideration of the following mutual covenants and agreements Gulf and Contractor agree as follows:

- I. (A) Contractor shall provide experienced personnel, all of whom shall be its employees, to staff the Gulf self-serve gasoline facility located in Gwinnett County, situated at 3905 LAWRENCEVILLE HWY, LILBURN, GA 30247.
- (B) Contractor's employees furnished to perform services for Gulf under the terms of this Agreement shall:
1. Act as cashier in collecting proceeds from the sale of Gulf's products to the public;
 2. Perform daily clean-up of the premises;
 3. Observe and record meter readings of gasoline dispensing pumps at subject premises and submit reports to Gulf as and when required;
 4. Perform other duties related to the operation of Gulf's self-serve gasoline station as designated in writing by Gulf.

Gulf shall furnish Contractor information and directions regarding operating standards, procedures and practices to be observed, including forms to be completed, at subject station. Contractor shall comply with those directions.

- (C) Gulf shall have the right from time to time during normal business hours to examine and audit the receipts, accounts, and other books and records maintained by Contractor concerning any and all monies received or collected by Contractor and its employees at subject premises.
- II. Commencing JUNE 6 1983 and continuing for the duration of this Agreement, Contractor shall supply its personnel to staff Gulf's self-serve station on the following days and during the following hours:

<u>Day</u>	<u>Hours</u>	
Sunday	<u>24</u>	until _____
Monday	<u>24</u>	until _____
Tuesday	<u>24</u>	until _____
Wednesday	<u>24</u>	until _____
Thursday	<u>24</u>	until _____
Friday	<u>24</u>	until _____
Saturday	<u>24</u>	until _____

- III. Contractor shall be compensated for personnel supplied pursuant to this Agreement as follows: From the effective date of this Agreement, Contractor shall be compensated at the rate of \$6⁰⁰ per hour for each hour Gulf's self-serve gasoline facility is open to the public for business.
- IV. Contractor's employees shall not use or permit the use of Gulf equipment on that portion of the property occupied by Gulf for the storage or sale of any products or merchandise other than that delivered to each station by or for Gulf. It is understood that Gulf shall retain title to all products or merchandise delivered by or for Gulf to each station until they are sold to Gulf's retail customers at which time title shall pass directly to said customers. Gulf shall establish the retail prices of its products and merchandise; Contractor shall have no authority to establish the retail price of Gulf's products or merchandise.
- V. (A) Under the terms and for the duration of this Agreement, Contractor is an independent contractor. Contractor is hired to perform the work described in this Agreement and shall be paid as provided in Paragraph III above. Contractor shall use its own discretion in performing work under this Agreement. Gulf shall have no right to control the manner and method in which Contractor performs the work provided in this Agreement.
- (B) Contractor shall furnish personnel necessary to meet the requirements of additional work to be performed hereunder upon notice of such requirements from Gulf.
- (C) Personnel furnished by Contractor shall be employees of Contractor. Contractor has the sole right to select, hire, train, compensate, discipline and discharge such employees. Contractor shall unilaterally determine and pay when due all salary, wages, fringe benefits and other forms of compensation as well as all payroll taxes, including contributions or taxes against employees, payable as a result of the work to be performed hereunder by Contractor's employees. Contractor shall comply with all State and Federal laws and regulations governing hours of employment and payment of wages and all other laws and regulations pertaining to its employees engaged in the performance of work hereunder.
- VI. Contractor agrees that it shall comply with the Non-Discrimination in Employment Clause attached hereto and made a part hereof as Exhibit I.
- VII. (A) Contractor agrees to exonerate, indemnify and hold Gulf harmless from and against any and all claims, losses, liability, costs or expenses, including but not limited to reasonable costs of litigation and attorney's fees at trial and appellate levels, made against or incurred by or on behalf of Gulf which are caused by or which arise out of any act or omission of Contractor or Contractor's employees or agents while performing work or supplying services to or for Gulf pursuant to this Agreement. At Gulf's option and upon written notice, Contractor will assume Gulf's defense against any

claims or actions arising from Contractor's performance of this agreement.

- (B) Contractor further agrees that in the event any claim or claims for workmen's compensation benefits or awards are made against Gulf by or on behalf of any employee or former employee of Contractor which arise out of injury to or death of an employee or former employee of Contractor or which in any way result from or are connected with or related to the work or services performed or to be performed by such employees or former employees of Contractor pursuant to this Agreement, then Contractor will indemnify, reimburse and hold Gulf harmless from and against any such claim or claims to the extent of all benefits and awards, liability, disbursements, costs or expense, including but not limited to reasonable costs of litigation and attorney's fees at trial and appellate levels, incurred in connection therewith. At Gulf's option and upon written notice from Gulf, Contractor will assume the defense of Gulf against any such claims.

- VIII.(A) During the term of this Agreement Contractor shall carry and maintain comprehensive general liability insurance covering personal and bodily injury, including death, and property damage. Such insurance shall have liability limits not less than Three Hundred Thousand Dollars (\$300,000) per person, Five Hundred Thousand Dollars (\$500,000) per accident or occurrence and One Hundred Thousand Dollars (\$100,000) for property damage. Said insurance shall also include contractual liability coverage for Contractor's performance under this Agreement.
- (B) During the term of this Agreement Contractor shall carry and maintain Workmen's Compensation Insurance on its employees, including Employer's Liability Insurance with a liability limit not less than One Hundred Thousand Dollars (\$100,000) for each accident. Said Workmen's Compensation Insurance shall be carried by insurers acceptable to Gulf.
- (C) Prior to commencing work or services under this Agreement, Contractor shall present certificates of insurance to Gulf evidencing that the insurance coverage required by Paragraph VIII(A) and (B) above is in force. Such insurance shall not be altered or cancelled during the term of this Agreement except upon at least thirty (30) days prior written notice to Gulf. Should Contractor at any time during the term of this Agreement refuse or fail to provide or maintain the insurance coverage required by this Agreement, Gulf, may either terminate this Agreement or continue it and procure insurance required by Paragraph VIII(A) and (B) above. In the event that Gulf chooses to continue the Agreement and procure required insurance, Gulf, may deduct the costs of said insurance from the consideration due Contractor under this Agreement or bill Contractor directly for such costs in which event Contractor agrees to pay such charges promptly when billed.
- IX. Valid, unexpired and unrevoked Gulf Credit Cards shall be honored and only authorized products or services may be purchased on credit at subject premises. No other credit card shall be honored by Contractor and no other

form of credit may be extended to customers. In making credit sales authorized by this paragraph, Contractor's employees shall follow all instructions and procedures issued by Gulf from time to time in its Credit Card Guide and Credit Card Bulletin. Should Contractor fail or neglect to follow those procedures, the amount of any sale made in violation of said procedures shall be charged back to Contractor.

- X. (A) All income, proceeds and Credit Card invoices arising from the sale of Gulf's products at subject premises shall remain the property of Gulf and shall be handled and remitted to Gulf as Gulf shall direct in written instructions to Contractor from time to time. In the event Contractor fails to account, make settlement, remit or otherwise observe designated procedures for handling funds, Gulf shall have the right to terminate this Agreement.
- (B) ~~Gulf shall furnish a Working Cash Fund in the amount of One Hundred Dollars (\$100.00) to Contractor at the beginning of the term of this Agreement, which Fund is to be used by Contractor to make change for Gulf's customers. Contractor shall secure Gulf's proceeds, including Credit Card invoices, in a safe on the premises as and whenever necessary in order to prevent the amount of said proceeds in Contractor's custody and not secured in the safe from exceeding One Hundred Dollars (\$100.00). Contractor shall be responsible for any loss or shortage which results from Contractor's failure to make said deposits.~~
- (C) Any arrangement whereby proceeds generated by Gulf's sale of its merchandise, including petroleum products, to its customers are deposited under Contractor's control and for Contractor's issuance of its check to Gulf for the sales made at the station covered by this Agreement shall not be construed as a sale of products or merchandise to Contractor. Such arrangement is merely a procedure used for the convenience of the parties in the performance of this Agreement.
- (D) Contractor shall be liable for the loss or shortage of motor fuels, or other petroleum products, merchandise or other assets owned by Gulf, including Gulf funds and Gulf Credit Card invoices, if such loss or shortage is due to the negligence, misconduct, or willful act or omission of Contractor or its employees or if Contractor or its employees participated or aided in any manner in a criminal act which resulted in such loss or shortage or if such loss or shortage could have been avoided or detected if Contractor or its employees had exercised ordinary care to protect such Gulf products, merchandise or assets from loss or damage.
- (E) Contractor shall be liable for all funds lost through larceny, robbery, embezzlement, extortion or theft.
- (F) Contractor shall be liable for all losses or shortages of gasoline caused by customers who depart the premises without paying ("driveaways").

(G) In those circumstances where Contractor shall be accountable for motor fuels, other petroleum products, merchandise and proceeds from the sale thereof, the amount of Contractor's liability shall be calculated using the retail price charged at the respective self serve location at the time the loss or shortage occurred. Accountability for items of equipment or other assets shall be based upon the value of the equipment or assets as carried on the books of Gulf at the time the loss occurred.

XI. Time is of the essence. In the event Contractor breaches any provision of this Agreement, Gulf may terminate Contractor's rights hereunder immediately by giving Contractor written notice.

XII. Notices given under this Lease must be written and may be delivered or mailed. If delivered they shall be delivered in person to either the party or an authorized representative thereof. If mailed, they shall be sent by certified or registered mail to the parties at the following addresses or at such other addresses as either party may hereafter designate in writing to the other party.

To Gulf: Gulf Refining and Marketing Company
P. O. Box 7117
Station C
Atlanta, GA 30357-0117

To Contractor: J. SHERWOOD DANIEL
P.O. Box 170
STONE MOUNTAIN, GA 30086

Notice sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the U. S. Postal Service shall be conclusive evidence of the date of mailing.

XIII. (A) The term of this Agreement shall be one (1) year, commencing JUNE 6 1983 and shall be automatically extended and renewed for successive terms of one (1) year each, provided, however, that either party may cancel or terminate this Agreement at any time during the initial or any renewal term by giving the other party written notice thereof at least ninety (90) days prior to the date of termination.

(B) Gulf and Contractor have entered into a Lease in which Gulf has leased to Contractor certain premises located on and adjacent to the self serve gasoline station covered by this Agreement. Termination or cancellation of that Lease for any reason shall simultaneously terminate this Agreement; any breach of that Lease shall be deemed a breach of this Agreement.

XIV. ~~This Agreement is void in the event of an assignment.~~

XV. This Agreement constitutes the entire agreement and understanding between the parties concerning subject self serve station. This Agreement may not be amended, changed, modified, altered or supplemented in any way except in writing, signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Bail Langford
Witness

Witness

RI Martin
Witness

Witness

Gulf Oil Corporation

By Jan 21
General Manager,
Gulf Refining and Marketing Company,
a Division of Gulf Oil Corporation

Dated: June 6, 1983

[Signature]

Dated: June 6, 1983

LEASE

THIS LEASE, made and entered into as of this 6th day of JUNE, 1983, by and between GULF OIL CORPORATION, a Pennsylvania corporation acting herein by and through GULF REFINING AND MARKETING COMPANY, a division thereof, hereinafter "Lessor", and _____ hereinafter "Lessee".

WITNESSETH1. Leased Premises

Lessor does hereby demise and lease unto Lessee, premises located in the City of LILBURN, County of CLARK and State of GEORGIA, being located on the self-serve gasoline premises located at: 3905 LAWRENCEVILLE HWY and being the same premises which are outlined in red on the diagram attached hereto and made a part hereof as Exhibit A, hereinafter referred to as "leased premises".

Together with all rights of ingress and egress to and from said premises from adjoining streets, highways and alleys and together with all rights to any and all parking spaces on the service station property to be used in common with Lessor and the customers, patrons, and invitees of Lessor and Lessee.

2. Lease Term and Termination

- (A) The term of this Lease shall be for a period of one (1) year, commencing on JUNE 6, 1983 and shall be automatically extended and renewed thereafter for successive periods of one (1) year each unless either party shall give the other party at lease ninety (90) days written notice.
- (B) Lessor and Lessee have entered into an Agreement For Supply of Personnel pursuant to which Lessee will supply its personnel to staff the self-serve gasoline facility located on premises adjoining the leased premises. Termination or cancellation of the aforesaid Agreement for any reason shall simultaneously terminate this Lease as well, and a breach of that Agreement shall also be a breach of the Lease.

3. Rental

During the term of this lease agreement, Lessee agrees to pay Lessor a monthly rental of 2555.00 Dollars (\$2555.00). Lessee shall make rental payments as Lessor shall direct in written instructions from time to time.

4. Use of the Leased Premises

During the term of this Lease, Lessee agrees and covenants to use the leased premises for the operation of a retail convenience food store only. Lessee expressly agrees not to use the leased premises for the sale of gasoline, nor shall Lessee use or permit the use of the leased premises for any illegal or immoral purpose.

5. Waste, Governmental Regulations

Lessee shall not commit nor permit waste or nuisance on the leased premises, and agrees to comply with all regulations of municipal, county and state or other governmental authorities pertaining to the use and occupancy of the leased premises.

6. Improvement of Premises

Lessee shall make at its expense any and all improvements and alterations which it deems necessary to the inside of the building(s) on the leased premises to make the leased premises suitable for its use and occupancy hereunder, provided that any such improvements and alterations must be performed in accordance with plans, specifications (including the cost thereof) and schedules submitted by Lessee to Lessor and approved by Lessor in writing prior to the commencement of any work thereunder. Lessor shall not be obligated to make any improvements and alterations to the leased premises. All improvements and alterations to the leased premises shall become the property of Lessor, without obligation to pay therefor. Further, Lessee shall furnish and maintain all trade fixtures and equipment it shall need for the operation of its convenience store business on the leased premises. All trade fixtures and equipment shall remain the property of Lessee except as provided in Paragraph 8 hereinafter.

7. Maintenance and Repair

Lessor shall maintain and repair the outside of building(s) on the leased premises, provided, however, that Lessor shall not be responsible for the maintenance or repair of any of Lessee's property, fixtures, appliances or equipment.

8. Surrender Upon Termination or Expiration

Lessee shall vacate the leased premises and surrender same to Lessor promptly upon the termination or expiration of the term of this Lease, broom-clean, and in as good a condition as at the commencement of the lease term, reasonable wear and tear excepted. All improvements, alterations or additions to the leased premises shall be in as good a condition as when said improvements were originally completed, reasonable wear and tear excepted. At any time prior to or within ten (10) days after the termination or expiration of the term of this Lease, provided Lessee is not then in default under this Lease, Lessee may remove any equipment, trade fixtures or personal property of Lessee provided that said property can be removed without causing damage to the leased premises. Any property of the Lessee not removed from the leased premises after ten (10) days from the termination or expiration of the Lease term may be removed and stored by the Lessor at Lessee's risk and expense, or, at the option of Lessor, such property shall become the property of Lessor without obligation to pay therefor.

9. Signs

Lessee shall have the right to erect such signs on the leased premises as are necessary to identify its convenience food store business, provided, however, that all such signs shall be of a type and design approved in advance by Lessor in each instance, and shall not obstruct or interfere with any signs installed by Lessor

or interfere with, inhibit or restrict the operation of Lessor's self serve gasoline service station.

10. No Warranty of Fitness

Lessee covenants and agrees that it has examined and is familiar with the condition of the leased premises, and that same are received "as is," and without warranty by Lessor as to its condition, repair or suitability for Lessee's intended use.

11. Licenses and Permits

Lessee shall pay any and all charges and fines imposed by any governmental authority resulting from Lessee's use and occupancy of the leased premises, and Lessee shall procure at its expense all necessary licenses connected with the Lessee's occupancy and use of the leased premises as herein stated from the appropriate governmental body.

12. Taxes and Utilities

A) Lessor shall pay all taxes on the real estate and Lessee shall pay all taxes on Lessee's personal property, equipment, fixtures and inventory located on the leased premises and any taxes applicable to the operation of Lessee's business thereon, when due and before any penalty attaches.

B) Lessor ~~shall pay~~ utilities except telephone, * Lessee shall hold telephone service in its own name and shall pay all charges for telephone service.

* dumpster expense.

13. Condemnation

If the whole of the leased premises, or such portion thereof as will make the leased premises unsuitable for the purposes herein leased, or if the whole of the self serve gasoline station premises of which the leased premises are a part, or a portion thereof which will make the premises unsuitable for use as a self serve gasoline service station, are taken or condemned for any public purpose, or if Lessor agrees to execute a voluntary conveyance thereof in lieu of condemnation, this Lease shall automatically terminate as of the date possession is taken by the condemning body. All compensation awarded or paid to Lessor by the condemning body or received by Lessor in exchange for its voluntary conveyance in lieu of condemnation shall belong solely to Lessor, and Lessee shall not, by virtue of this Lease, be entitled to any part thereof; provided, however, that nothing in the Lease shall preclude Lessee from prosecuting any claim directly against the condemning authority for loss of business, or depreciation to, damage to or cost of removal of, or for the value of stock, inventory and other personal property of Lessee; and further provided, however, that no such claim shall diminish or otherwise adversely affect Lessor's award or proceeds.

14. Indemnity

Lessee agrees to exonerate, save harmless, protect and indemnify Lessor from any and all losses, damages, claims, suits or actions, judgments or costs, including attorney's fees, which may arise from or grow out of any personal or bodily injury to or death of any person

or persons or damage to any property caused by, resulting from, growing out of or in any manner connected with the use, occupancy, possession, repair or condition of the leased premises or the business to be conducted thereon.

15. Insurance

Lessee agrees to carry comprehensive general liability, property damage, and contractual liability insurance for itself and its employees, with those insurance carriers acceptable to Lessor. This insurance shall provide coverage with maximum limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for injury or death of one person, ONE MILLION DOLLARS (\$1,000,000) for injury or death to any group of persons as a result of one accident or occurrence, and ONE HUNDRED THOUSAND DOLLARS (\$100,000) for property damage. Prior to or on the date of the commencement of the term of this Lease, Lessee shall furnish Lessor a certificate of insurance evidencing that the above insurance is presently in force and providing that such insurance shall not be cancellable except upon thirty (30) days prior written notice to Lessor. Should Lessee at any time refuse or fail to provide or should Lessee cancel the insurance coverage required hereby, then Lessor, in its sole discretion and at its option, may declare this Lease immediately terminated, or, in the alternative, may continue the Lease in effect and procure such insurance. Should Lessor choose to continue this Lease in effect and procure such insurance, Lessor, at its option, may deduct the costs of said insurance from any funds due Lessee under this Lease or under the aforesaid Agreement For Supply of Personnel or may bill Lessee directly for such costs in which case Lessee agrees to pay such costs promptly upon billing.

16. Assignment, Sublease, Liens

- A) Lessee shall not sublet the leased premises in whole or in part, nor assign this Lease without the prior written consent of Lessor. It is understood that only the right to possession is granted by this Lease and that no estate is created hereby. Notwithstanding any assignment or sublease of this Lease, with or without Lessor's consent, Lessee shall remain liable to Lessor for the performance of the terms and conditions hereof.
- B) Lessee shall keep the leased premises free from any and all liens and encumbrances arising from or growing out of Lessee's use and occupancy of the leased premises including but not limited to any liens arising out of any improvements, alterations, additions, maintenance, repairs or replacements made by or on behalf of Lessee to the leased premises. At Lessor's request Lessee shall furnish Lessor with written proof of payment of any item the nonpayment of which would or might constitute the basis for a lien on the premises. Should any lien be made or filed on or against the leased premises, Lessee shall within ten (10) days following written demand by Lessor, cause the lien to be discharged by either satisfying the demand of the lien claimant(s) or filing a bond in an amount sufficient to release the lien.

17. Damage to the Leased Premises

- A) In the event that the leased premises are damaged by fire or other casualty so as to render them untenable or unsuitable for the use contemplated in this Lease, or if the self-serve gasoline station premises, of which the leased premises are a part, are damaged by fire or other casualty so as to render them unsuitable for use as a self-serve gasoline station, then this Lease shall be cancelled and terminated as of the date of the casualty.
- B) If the leased premises or the self-serve gasoline premises are damaged by fire or other casualty but not to such an extent as to render them untenable or unsuitable for their intended use, then Lessor shall restore the premises, to the extent possible, to their condition immediately prior to the casualty damage, and the Lease shall continue in effect without an abatement of rent either during or after the restoration process.

18. Default

Time is of the essence. Should Lessee breach or be in default of any of the terms, conditions or covenants of this Lease, or if Lessee makes an assignment for the benefit of creditors or if Lessee abandons the leased premises or suffers this Lease to be taken under any right of execution then Lessor, besides other rights and remedies it may have, and without waiving or otherwise giving up those other rights and remedies, may immediately terminate this Lease and Lessor shall have the right to re-enter immediately. Lessee hereby expressly waiving any claim against Lessor and any statutory rights inconsistent therewith. In the event of such re-entry, Lessor shall not be deemed guilty of trespass, and may sell or store for the account of Lessee any personal property, merchandise and stock of Lessee then on the leased premises. Lessee hereby appoints Lessor its agent for such purpose and agrees that Lessor shall not be liable to Lessee for damages or otherwise for any act or omission of any such sale. At its discretion, Lessor may pay out of said proceeds any indebtedness owed by Lessee to Lessor, any taxes or contributions owed by Lessee, which in the absence of payment would or might reasonably be an obligation of Lessee's successors, and any other debt(s) related to Lessee's use and occupancy of the leased premises. In addition, Lessor shall have the right to discharge any liens upon said goods from the proceeds of the sale of those goods under the terms of this paragraph. Lessee shall reimburse Lessor for any payments in excess of such proceeds.

19. Additional Remedies for Lessor

In addition to the right to re-enter immediately and repossess the leased premises, should Lessee breach or be in default of any of the terms and conditions of this Lease, Lessor shall be entitled to all remedies incident to the relation of landlord and tenant, and,

to the extent permitted by law, Lessee hereby empowers any attorney of any court of record to appear for him and confess judgment in ejectment, unlawful detainer, or other applicable forms of legal action.

20. Notices

Notices given under this Lease must be written and may be delivered or mailed. If delivered, they shall be delivered in person to either party or an authorized representative thereof. If mailed, they shall be sent certified or registered mail to the parties at the following addresses or at such other addresses as either party may hereafter designate in writing to the other party.

To Lessor: Gulf Refining and Marketing Company
P. O. Box 7117
Station C
Atlanta, GA 30357-0117

To Lessee: J. SHERWOOD DANIEL
PO BOX 170
STONE MOUNTAIN, GA 30086

Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the U. S. Postal Service shall be conclusive evidence of the date of mailing.

21. Severability

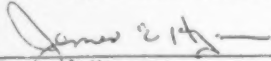
If any provision of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall continue in full force and effect.

22. Entirety of Agreement

This instrument together with the aforesaid Agreement for Supply of Personnel, contains each and every agreement and understanding existing between the Lessor and Lessee relative to the leased premises, and shall not be changed, modified, altered or supplemented except in writing, signed by an authorized representative of each party. It is understood and agreed that this Lease shall not become binding upon the Lessor until executed by a District Manager thereof.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto
set their hands and seals below.

Gulf Oil Corporation (Lessor)

By: 

General Manager
Gulf Refining and Marketing Company,
a Division of Gulf Oil Corporation

Witness

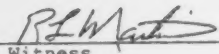
Dated: _____

Witness

(Lessee)



Dated: JUNE 6 1983


Witness

Witness

Mr. MAVROULES. Thank you very much, Mr. Houston. I want to thank all of you for your testimony. I do have a number of questions that I would like to ask.

First, Mr. Gaeta, you mentioned that you had 29 others on that suit that you had filed, am I correct?

Mr. GAETA. Yes.

Mr. MAVROULES. Could you tell me what happened to the others? We got your story this morning.

Mr. GAETA. What we have is this: in the suit that we took against Arco and Shell, there were 29 dealers. My particular situation was involving my particular location, but there were 28 other stories out there. Just to mention one, there is a station, I believe it is in Worcester, where there was an Arco station on one corner and a Shell station on the other corner, and in the buy-up, Shell bought the Arco station next door so where there was an Arco station on one block and a Shell station on the other block, now there are two Shell's competing with each other. The original station was a key dealer for Shell, so he has a good facility, while the station that the former Arco dealer has is in jeopardy of going out of business.

There are other stations in the very close geographic area, probably within a 1-mile radius. There are five Shell stations and they are all competing with each other. Some of my guys in this suit are going to go out of business because of that.

Mr. MAVROULES. OK. Let me ask a very general question. Perhaps all of you can respond to it. Let me be very blunt with my terminology also.

You have made some very hard statements in your testimony and I'm sure you meant it. Do you feel that the major petroleum companies are trying to screw the American public?

Mr. HOUSTON. I would have to answer emphatically yes, sir. Under the circumstances of the last few days or the last few months, 4 or 5 months, it is quite obvious that the refiners are interested in the dollar and if they are not intending to pass along to the consumer when they have control of retail marketing, to the extent that they will sell at lower prices, they intend to recover, and I submit that the Federal Trade Commission has been negligent in its duties and responsibilities in carrying out the antitrust laws of this country, that there is evidence that they have in effect violated, these refiners have violated the antitrust laws, but it is not reachable for us as small business. We cannot afford it.

The recent case that the Georgia people went into court against six companies on the prices, under the new Georgia below cost sales which were temporarily delayed, it has been declared unconstitutional and we are temporarily delayed, and we do know that we have probable reason for expecting success under an antitrust action, but we cannot afford to go a quarter of a million and 5 to 10 years into court. It's just not there.

Mr. RASHEED. Mr. Mavroules, I, of course, am much kinder than Mr. Houston, but I think I would answer your statement in this way.

What I referred to and spent a lot of time was detailing the growth in concentration, growth in power, the growth in influence, the predominant position now in the refining industry, the fact that now there is a bottleneck. We no longer were worried about

OPEC. All that cheap oil in the world today, they could give it to us. It doesn't do us any good until it goes through these refineries. That's where the bottleneck is, and that's where the concentration of power through these mergers has really been concentrated, through the refineries, so there is a philosophy that I have heard many times that if you have power, anybody who has power is going to use that power.

I mean we can't make moralists out of all of us I'm afraid. When you have the power to achieve a certain end and your motives without any question are profit, I mean that's the name of the game. Obviously if you have the power, you are going to use it, and in this case, we have some raw, undiluted power, and we have some raw, undiluted ambition to make profit, so why wouldn't you?

Mr. PATRICK. Mr. Chairman——

Mr. RASHEED. Excuse me. One thing I omitted—I submitted in my statement a study from the Citizens Energy Coalition, Ed Rothschild's study on this very subject, and I think it is headed the great petroleum stickup or some dramatic title, but it refers exactly to this subject and I think it says that there has been a billion dollar ripoff or something like that, but it does have statistics and many figures.

Mr. PATRICK. In line with your question, on page 3 of the attachment that I turned in which is the letter that I sent to them when I got out, I said very briefly here, I said from a moral standpoint, I feel you have been extremely unfair with your methods and dealer relations. But for the hand of God I would have been bankrupt long ago which seems to be your goal. To this end I cannot imagine anyone in your organization being a Sunday or whatever churchgoer and then fornicating your fellow man the balance of the time, so perhaps the day will come to rectify the same.

I felt it and in line with your question, I said it.

Mr. MAVROULES. I appreciate the statement. The reason I asked, of course, was because the next panel will have an opportunity to address that subject and I'm sure they will probably give a different view. Let me ask a few more questions here before I turn it over to my colleague, Mr. Bedell.

Assuming the bill does not pass, what do you predict the structure of the gasoline market will be, down the road? Give me your best evaluation.

Mr. RASHEED. I think that in our testimony we have indicated pretty much a hopeless position. We are at the mercies so to speak of our suppliers. We think that we provide a good service to the American public. We think we are needed.

I think that our future, though, is entirely in the hands of our refiners. I think that they have a strategy in mind that does not include very many dealers. I think they are prepared to allow us to stay in business only subject to certain conditions, and under those conditions they will control the—they will allow us a margin of profit for the surviving dealers, that is, a margin of profit only enough to cover overhead expenses and probably make it uneconomical to stay in business.

Right now I would say that we really don't have a future except through the few—we have one set of Federal laws, the Petroleum Marketing Practices Act, which does give some protection. It cer-

tainly is not adequate. It has been riddled with holes by the decisions that have come down, but that's the only defense we have. We have no defense from the Federal Trade, no protection from the Federal Trade Commission.

In fact, Mr. Bedell can probably recall a conversation, I think there was testimony before Small Business about 1981 where Mr. Rowe and Mr. Calvani from the Federal Trade Commission were forced to admit by certain—I forget who it was, certain members of the panel who cross-examined them at length—there were about three or four pages. I think Mr. Bedell may have taken part in that, where they forced them to admit that no existing laws will not protect dealers.

We have another case where we submitted a study that came from dealers all over the United States to show how discount houses are selling discount oil all over the country at prices in some cases that are less than one half of the cost that a dealer pays for his oil. We showed a graph, a study of every company. We showed newspaper ads from all over the country which showed that people were, discount stores were selling oil for 20 cents, 29 cents, 39 cents a quart all over the country, that the dealer is paying his company .96, \$1.08, for that same oil at wholesale, and of course the dealer is being advantaged, but we sent that to FTC 2 years ago and we have never had an affirmative response that they would even study that.

Mr. MAVROULES. Mr. Houston, do you want to reply to that question?

Mr. HOUSTON. Very short comment—with respect to your original question, I believe if an examination were made today of the strategy of the companies' construction of new locations across the country, certainly it is true that the State of Georgia where I am most familiar with, you would find that they are not being leased to the independent retail dealers. All new structures are of the pumper type system 2000 Texaco type, big convenience gasoline pumpers, and that those are contract labor contract operated or direct employee operated by the companies.

Now if that trend continues, as it certainly appears that it will and has escalated during the last few years, then through the natural construction of new stations, through change of traffic patterns and so forth, there is a gradual elimination and erosion of the independent dealer in the marketplace by substitute of big company operations. So I think that in itself tells the story that in some instances, some companies, in all stations constructed for a number of years, have not leased a single one to an independent dealer.

I think a close examination of that will reveal the true status of what our future is. We're on our way out unless the Congress will do something for us in this divorcement issue, and in the modifications, adjustments, amendments to the Petroleum Marketing Practices Act because the companies' decisions in that case, in those cases, have been adverse to us as to what we believe that Congress intended to try to do, to try to protect small business against the arbitrary decisions of the companies to eliminate them in the marketplace.

Mr. FERRARA. My name is Jerry Ferrara. I am executive director of the New Jersey Gasoline Retailer's Association. I have two illus-

trations that will answer your question very quickly if I may present them to you.

Mr. MAVROULES. Please do. Do you want to expand upon this?

Mr. FERRARA. I would like to just give you one comment. If you will take a quick look at the map, it will answer your question. You will see that there are 16 stations in the area. The large circle shows a company Exxon station being built. That has already been built. It took them 10 years to get the permit.

As you can see, there are five Exxon stations in that area. All I say in this thing, why did they build the company-owned station? And I will leave it to your imagination, Mr. Chairman.

Mr. MAVROULES. This will be included in the record, and I appreciate your testimony.

[The chart and attachments referred to follow:]

LAW OFFICES OF
JERE W. GLOVER
SUITE 3008
1725 K STREET N.W.
WASHINGTON, D.C. 20006
TELEPHONE
(202) 778-1135

April 18, 1986

Ms. Catherine Gorman
House Small Business Committee
2361 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Re: H.R. 3824

Dear Cathy:

Enclosed is a copy of a report from Jerry Ferrara of New Jersey. This report details an instance where a dealer found that his competition (an Exxon company station) was selling gasoline at below the dealers' cost. In view of the testimony of Mr. Larkins from Exxon, I thought you might wish to include this in the record.

Sincerely,

Jere W. Glover

JWG: te
Enclosure

- NEW JERSEY GASOLINE RETAILERS ASSOCIATION -

COMPLAINT REPORT



1. Name and address of complainant 5 point's Exxco - John R McGowan 3rd
121 SALEM RA - UNION - NJ - 07083
2. Name and address of supplier complained of Company Exxon
SALEM RD / MORRIS AVE - UNION 07083
3. Date and place where improper action occurred 4/19/55

4. Name and addresses of persons involved and witnesses if any

my PARTNER AND MYSELF

5. Detailed description of such improper action I feel that the prices at the Company Exxon station are inflated / excessive as compared to the prices at my station which is on a side road which is only 1/2 mile away. The customer should be able to get the same prices from the other station in the area as well as here.

The cost of gas is as follows, along with the prices the company station is getting

	(Cost)		(Company station)
Reg	104.2	-	104.9
mid	107.2	-	110.9
Spec	113.7	-	127.9

This is forcing me to lower my price and will have the same effect on other Exxon stations in the area.

I hereby certify that the above facts, as stated to the best of my knowledge, are accurate.

DATE 4/22/55

John R McGowan 3rd
 Signature and Title

OVER

- IMPORTANT NOTICE -

IT HAS BEEN BROUGHT TO OUR ATTENTION THAT SOME OIL COMPANY REPRESENTATIVES ARE APPLYING PRESSURE ON DEALERS.

BY PRESSURE, WE MEAN:

COERSION ON PUMP PRICE: *

THREAT CANCELLATION OF LEASES FOR ANY REASON:

KEEPING LONGER HOURS OF OPERATION:

CARRYING A LARGER STOCK OF T.B.A. THAN A DEALER CAN AFFORD:
and

BEING ACTIVE IN YOUR ASSOCIATION.

IF YOUR COMPANY REPRESENTATIVE TRIES TO HARASS YOU IN ANY WAY, FILL OUT FORM ON REVERSE SIDE AND CALL OUR OFFICE IF URGENT. MAKE SURE YOU HAVE THE TRUE FACTS.

YOUR SINGLE COMPLAINT CAN BE YOUR PROTECTION. COMBINED WITH COMPLAINTS FILLED OUT BY OTHER DEALERS CAN SHOW THE TRUE PICTURE WHETHER IT IS COMPANY POLICY OR AN INDIVIDUAL SALES REPRESENTATIVE.

THE NEW JERSEY GASOLINE RETAILERS ASSOCIATION WILL HELP ANY DEALER IN THE SERVICE STATION BUSINESS WHO IS WILLING TO GIVE PART OF HIS TIME AND EFFORT TO ELIMINATE THE EVILS THAT EXIST IN OUR BUSINESS.

YOU CAN HELP US HELP YOU!

WE CAN DO BETTER TOGETHER!

N. J. GASOLINE RETAILERS ASSOCIATION
66 Morris Avenue
Springfield, N. J. 07081
Telephone: 201-686-1000



CARD NO. 02 89

DATE 02 89

NAME BIN

TOTAL AMOUNT

EXXON

EXXON COMPANY, U.S.A.
A DIVISION OF EXXON CORPORATION

JOHN A. MCCORMACK

4132713547

SALES & SERVICE UNION NJ

091985

5040243

DATE

04 off for Cash 104

ITEM	QTY	PRICE	AMOUNT
REGULAR	5.75	1.05	6.04
TOTAL			6.04

SALES TAX 0.30

TOTAL 6.34

RECEIVED BY

RC3-VAC

SALES TAX

TOTAL 6.34

PLEASE PRINT FULL NAME AND ADDRESS

[illegible]

Mr. MAVROULES. We are talking about divorcement legislation here this morning as put forth by my colleague, Mr. Bedell. I believe we have divorcement in five States. Am I correct?

How is it working out in those five States? Anybody care to comment?

Mr. RASHEED. Well, I would be very unequivocal in saying that the State that I am most familiar with, of course, is Maryland, and I think that divorcement there has been an unqualified success. I think the dealers in Maryland as a result of divorcement are probably the strongest dealers in the country, and I also think that the services that they provide the consumer in Maryland are probably amongst the best in the country. They probably have the the best equipped stations in the country.

One of the reasons that I think that their position is sound, not sound, is subject to the same pressures as dealers everywhere, but why by comparison the dealers in Maryland probably are in a better position, is that they don't have to worry about an oil company coming along and saying hey, Joe, you're doing a fine job in building up this business, I think we're going to need this for a company operation and then maybe they won't even tell him that. Most times they don't. They simply use a devious method to ensure his demise and take over that location eventually.

That was a standard practice of oil companies some years back, but I think that dealers in Maryland have more security and as a result, they can invest in their business. They can offer the services, and I think they serve their community much better.

Now, the statistics that we have show that the margins of profit for dealers in Maryland have been the lowest in the country.

Now, the only way they can do that is to be so competitive that their other operations are supportive. In other words, they don't depend entirely on their margin of profit from gasoline. They have good locations and they can afford to be competitive.

I don't think anybody, today, can survive on just gasoline profits, so I think the public has benefited a great deal in Maryland from that.

Mr. MAVROULES. OK.

Mr. Bedell.

Mr. BEDELL. You mentioned Maryland. Do you have any information on the other four?

Mr. RASHEED. I don't have statistics. I can tell you—let's see. Connecticut has done quite well. I think the story of Connecticut is very similar.

Mr. BEDELL. If the oil companies come before us and say you know it has been a disaster in those other four States, how would we answer that?

Mr. RASHEED. I would say that the pricing study that we did, compared prices in divorcement States as to prices in nondivorcement States, and out of the four lowest prices in the country, three of them were divorcement States and there is only five, so I would say that the experience of divorcement has been good generally.

Could Jim Daskal say a couple of words?

Mr. DASKAL. I am Jim Daskal. I am counsel for the SSDA.

I just wanted to mention that I am a Baltimore resident and Baltimore native, and one of the allegations that is raised about the

effect of Maryland aside from the issue of consumer prices, and I have to say I travel the east coast regularly—if we are paying x number of dollars more as Maryland consumers, it doesn't appear on my credit card receipts.

One of the allegations that is raised is that you are going to lower the mix of consumer services and that you would lower the hours of operation that service stations are available to the Maryland public, and just to give you a real world example, I thought it would be interesting to trace my route coming from my home in Baltimore to work every day.

Upstreet from my home I have a Crown station open 24-hours, a high volume service-type operation that has a 24-hour bank card teller machine on its premises. As I go a mile closer to the highway I have an interesting Shell station that has a convenience store, service bays, a full service island, and a canopied self-service-type island.

Then a few blocks further down I have two conventional stations, one Mobile, one Exxon, and then about half a mile further on down the road we have another conventional Exxon station. I have a Shell station with a food market, and then I have a high volume Amoco with a car wash.

At least from my personal experience I think that the contentions that the divorcement in Maryland has resulted in a range of, changes in the range of, mix of services offered to the Maryland consumer, I think just by my work every day, that is just not correct.

And the other issue that has been raised with regard to dealers cutting their hours of operation in Maryland, most of these stations are open 24-hours, and in any event, under the Petroleum Marketing Practices Act it is very clear that a dealer who fails to keep the required hours of operation can be terminated, the hours of operation in the contract, so those two contentions about the Maryland law just don't add up in the real world.

Mr. BEDELL. Mr. Gaeta, did you request an opportunity to bid on the purchase of your station when it was put up for sale?

Mr. GAETA. Yes; I did.

Mr. BEDELL. You indicated to them you would like to pay the—

Mr. GAETA. I certainly did. I got a very cold letter back—this was after, like I said, 20 years, I started there as a kid—that said there was a letter of intent to sell to Shell. If they didn't sell to Shell, then they would sell to me, and I have the letter in my files.

Mr. BEDELL. Mr. Chairman, we have heard this just time after time after time in previous testimony.

Mr. GAETA. I offered them twice the amount of money that they would sell it to Shell.

Mr. RASHEED. Would you repeat that?

Mr. GAETA. I offered them twice the amount of money that they would sell it to Shell.

Mr. BEDELL. That was Arco?

Mr. GAETA. That was Arco.

Mr. BEDELL. They are appearing before us. We will have a chance to check on that.

Mr. GAETA. That was for one station—my station.

Mr. BEDELL. I don't want to take a lot of your time. We have talked to each other quite a good time. I guess the concern I have is that I think it is correct that people use their power if they can to enhance their position.

It is my contention that the purpose of government is government is here to keep people from abusing their power. That's why we don't have private armies here in the United States and why we have laws and all that sort of thing, and I guess my personal opinion is that we have an administration today that worships power. I don't care if it's world affairs or our country or what, and so I just have to tell you at least for me as I have served here in the Congress and see what is happening both within our country and outside of our country, it may be great for those that have sufficient power, it may be great; for those of us that do not have, God help us. And for all others outside of our country and all over the world who don't have the power, God help you.

I yield back the balance of my time.

Mr. GAETA. One other note—each one of the 29 dealers in the group, offered to buy their location from Arco.

Mr. BEDELL. Thank you.

Mr. MAVROULES. I just have one final question.

Where is this new station you bought where you can buy gas 20 cents cheaper?

Mr. GAETA. OK. The station—Congressman, he knows the location. If you are familiar with the DPW Pit on Route 1 north of Peabody, and Sir John Motel, there is a service station right out in front that is operated by Gaeta's Automotive Service. It's the exact same octane that you are buying from any major supplier.

Mr. MAVROULES. Thank you. I got a deal here this morning, Berkley.

Thank you very much, gentlemen. Mr. H. Laddie Montague, Jr., Berger & Montague, Philadelphia, PA; John Umbeck, Krannert School of Business, Purdue University; Phillip Chisholm, executive vice president, Petroleum Marketers Association of America; and F.C. Roberts on behalf of the Society for Independent Gasoline Marketers of America and the National Association of Convenience Stores—welcome, gentlemen.

I'm going to ask Mr. Montague to lead it off.

TESTIMONY OF H. LADDIE MONTAGUE, JR., BERGER & MONTAGUE, PHILADELPHIA, PA

Mr. MONTAGUE. My name is Laddie Montague. I am with the firm of Berger & Montague, and I am here to support the open supply portion of H.R. 3824.

I was asked to appear today, I think, because I was the lead trial counsel in the *Bogosian* litigation which I believe is the—hope to be anyway—the forerunner of this legislation.

I must point out, though, that the *Bogosian* agreements were the result of litigation, not legislation, and they were negotiated compromises governed by the confines of the issues of the lawsuit and the perceived risks in that lawsuit.

However, the importance of those settlements is that for the first time, it granted the lessee dealers the right to sell gasoline ob-

tained from a source other than their respective lessors. Five of the defendants, five of the major oil companies, agreed to allow de-branding. Six of the defendants agreed to allow the installation of separate tanks and pumps.

Our goal wasn't as to whether or not a dealer actually took advantage of those provisions. The mere fact that he had the opportunity, and I stress the word "opportunity," to purchase gasoline from an outside source gave him, for the first time, leverage, price pressure to place on his lessor oil company, and I think it is important that this legislation gives the dealer that opportunity, and I think that Mr. Coburn of the DOE, I was a little surprised by his statement that this should not be a fiat of legislation because this legislation if passed will not require the dealer to buy some of his gasoline from an outside source. It only gives him the right to do it, and it does not require.

All it does is prevent the supplier, the lessor, from requiring the dealer to buy 100 percent, but the dealer, and I think any dealer will tell you this, if he has his druthers, he would prefer to get all his gasoline from one source, but if he can't do that competitively, and where he has no right to bargain on a price, then he should have the right to go elsewhere. He should have the opportunity to go elsewhere, and just that opportunity will put price pressure on his supplier and make him think twice as to whether or not he is going to charge a better price. That's what our philosophy was in the settlement.

These agreements we believe are a steppingstone and we hope that this legislation goes through to build on it, but we have to recognize that the settlements have three limitations.

First, they are only—it only applies to the class members which are defined as lessee dealers at the particular time that the decrees were entered into, and lessee dealers of the 13 defendants.

It is only effective for a 5-year period, and now about a year of that has run, so it is only effective for another 4-year period.

And third, it is a judicial decree and it is certainly not an act of Congress.

Based on what I have found and we uncovered in 13 years of litigation and very indepth discovery of the oil companies, I believe and I represent to this committee that the bill is eminently fair for the following reasons—the oil companies themselves treat gasoline as fungible whenever it is in their interest to do so. We found the following, and this is documented in the record.

In the *Bogosian* case, they swap gasoline amongst each other. We found that one major company—Mobile—at one point received 35 percent of its annual gallonage of 6.3 billion gallons from outside sources.

They refine it for each other. They buy gasoline from outside sources. In some regions a company will market all of its gasoline as a result of swapping. None of the gasoline they marked in a particular area is refined by their refiner. Sometimes a company adjusts their own specifications for gasoline in order to accommodate an exchange partner—in other words, that we found one particular instance where a major company which has now been merged into another major company, was, its specifications were higher than those of its exchange partners and it decided it was going to lower

its own specifications so that it would not be providing its exchange partners with the gasoline of greater quality than it was receiving from its exchange partners.

Some of the companies shipped and sold gasoline through what is called fungible pipelines, and I'm sure this committee is familiar with those. That is a situation where the gasoline that is pumped into the pipeline has to meet a certain specification, and you don't necessarily, the company does not necessarily get out of the pipeline the exact gas that is shipped it, but it is assured it is the same specification.

When convenient or in the economic interest of the company, a company accepts the additives of another company. We found out that in Pennsylvania at one point 38 percent of Phillips' gasoline was Exxon gasoline with the Exxon additive in it. Some companies' additives were actually produced by another company, and if I may, I would just like to read a one-sentence excerpt from a letter which was written or I guess it was an internal memorandum which was written by the general counsel of EP.

Quote, "I understand that they use it * * *" the additive, "* * * more for trademark purposes than for actual performance reasons."

That was one of our theories in the *Bogosian* case, that the additive was merely there to make a trademark issue so that they could protect through that the use of anyone selling any other gasoline through the pump.

Apparently a large portion of the public now perceives gasoline to be fungible, and while I don't have a definitive source for that, I did notice in the Thursday, April 3 issue of the Wall Street Journal there was a little squib entitled generic gasoline which gave a synopsis of a national telecon survey by R.H. Ruskin Associates which found that more than 40 percent of those polled either believe gasolines were all about the same or didn't know which one is best.

The regulations—well, lastly, if this bill passes, open supply will finally make the dealer level a competitive force with respect to price which it has never been able to do before, and I think we have found that—I like to think the *Bogosian* case was the reason the prices are falling but I know that's not completely so. But I do know that from the beginning of that settlement and before the oil glut, the prices did lower, and I have also noticed that some companies have initiated what they call rental rebate programs which basically are set up where if you buy above a certain gallonage per month, then you get a rebate on the remaining gallonage, which basically means that they are giving a price concession with respect to gasoline once you purchase over a certain amount, and then that's a form of price competition.

I would like to make two recommendations if I may with respect to the open supply requirement of 70 percent. One is I think it is much too high. I fear that the 70-percent minimum is at such a high level that it will either be impossible or economically unfeasible for a dealer to take advantage of open supply which would in fact emasculate this bill.

I think that if you go into the *Bogosian* settlement there is a representative amount requirement which is in such quantities as are necessary to satisfy customer demand, whereas in the case of

Mobile, 50 percent, a problem will arise with storage space and a problem will arise with whether or not the dealer has the capability of buying tank wagon, full tank wagonloads where he gets a better price if he goes to an outside source.

After 13 years of complex and difficult litigation in *Bogosian*, we achieved the result whereby the major oil companies for the first time ever admitted that they could live with the concept of open supply.

Unfortunately, those settlements have only about 4 years to run and litigation, although it was suggested earlier by the FTC representative, litigation is not really an answer.

First, the dealers are so economically weak compared to the oil companies that it is not a fair match. For example, in the *Bogosian* case, the oil companies just deposed our experts alone for 53 days.

Second, the case law seems to favor the oil companies, and I believe that is a result, a direct result of this economic disparity, and I think, and it is in my statement, there was a statement made by Judge VanArtsdalen, the judge who presided over *Bogosian*, who said basically that this area really belongs to Congress and that the courts are not the ones that really should revamp industrial practices.

I believe it would be unfortunate if this committee and Congress does not now build on what was started with the *Bogosian* consent decrees.

Thank you.

Mr. MAVROULES. Thank you very much for your testimony.

Mr. MONTAGUE. If I may, I do have some things I would like to put in the record.

Mr. MAVROULES. Without objection, they will be placed in the record in full.

[The material referred to in testimony is being held in subcommittee files. Mr. Montague's prepared statement follows:]

PREPARED STATEMENT OF H. LADDIE MONTAGUE, JR., BERGER & MONTAGUE,
PHILADELPHIA, PA

Gentlemen:

My name is H. Laddie Montague, Jr. I am one of the lead counsel in the case of Bogosian v. Gulf Oil Corp, a litigation against thirteen major oil companies, in which we represented approximately two hundred thousand lessee-dealers, including the more than forty thousand dealers leasing stations from these oil companies at the conclusion of the lawsuit. This hard-fought litigation lasted for more than thirteen years and only recently concluded with a separate settlement with each defendant which secured some very important rights for our clients, some of the same rights which are the focus of the bill now proposed, H.R. 3824.

The need for legislation is threefold. First, the Bogosian Settlements are effective only with respect to members of the classes. Secondly, the provisions terminate at the end of five years. Thirdly, the benefits of the settlements are judi-

cially created and enforced. The proposed bill will take the Bogosian Settlements and render them the law by congressional action applicable to all motor fuel dealers across the land.

Before I discuss the Bogosian settlements, I will briefly describe the nature of the Bogosian lawsuit. We alleged that the oil companies named as defendants, the largest oil companies in this country and certainly some of the largest corporations in the world, had conspired to force their dealers to purchase all of their gasoline from their respective lessors. In other words, we alleged that a dealer of Company "A" was forced to purchase all of his gasoline from that company, a dealer of Company "B" from Company "B" and so on. The net effect of this alleged conspiracy was a restraint upon price competition in the gasoline industry. A dealer of Company "A" was forced to buy gasoline at the prices Company "A" demanded because that dealer could not shop around for products from another source. Any dealer who attempted to purchase products from an alternate source was removed from his station, or at best, his lease was not renewed. It is well known that while these oil companies would not allow their dealers to buy products from alternate sources, they themselves were procuring substantial amounts of their own product from the alternate sources foreclosed to their dealers. Thus, Company E, which did not allow their dealers to purchase from companies A-D, was itself purchasing substantial portions of its own supplies from Companies A-D. As the Court pointed out in its opinion denying summary judgment sought by the

defendants (reported in Bogosian v. Gulf Oil Corp., 596 Federal Supplement 62 (1984):

"...plaintiffs will offer extensive proof that the defendant oil companies themselves regularly exchange large quantities of gasoline, which gasoline is then resold under a different defendant's trademark. Plaintiffs evidently have proof that in certain instances such gasoline is sold to the public by the acquiring defendant without that defendant's additives or meeting its own specifications for gasoline sold under its trademark. If nothing else, such evidence at least raises a possible inference that the defendants either considered or acted as if all gasoline is fungible."

The Bogosian settlements, which were achieved on the eve of trial, addressed these price-restraining and anti-competitive practices and put an end to them for the life of the settlement, which is five years. The settlements provide that the defendants will not conspire or collude with respect to the brands of gasoline their lessee-dealers may sell and with respect to the terms and conditions contained in their respective leases and supply agreements. This provision remedied the core allegations of the Bogosian case, and should any of the defendants conspire with another, they would be subject to contempt sanctions from the Court in addition to other sanctions. The settlements went further than this, however; eleven of the settling defendants agreed and expressly recognized that they could not require their respective lessee-dealers, under the terms and provisions of their leases and supply agreements, whether taken together or separately, to purchase all the gasoline sold by the lessee-

dealer from the lessor-defendant. This right is, of course, unrelated to any claim of conspiracy but rather relates solely to the relationship between the individual oil company and its lessee-dealers. The settlements provide that these defendants can satisfy the "non-exclusivity" provision in one of two ways: by allowing a dealer to debrand his station -- using existing tanks and in some cases, pumps -- to sell a brand of gasoline other than the brand of the lessor, or to permit the dealer to install, at his own expense, separate tanks and pumps or both. The provisions of the relief relating to the installation of additional tanks and pumps provide a real benefit in light of the Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801 et seq. which guarantees the dealer a secure tenure at his station. Moreover, it is quite probable that other sellers of gasoline, particularly jobbers, may be willing to invest in tanks and pumps in a lessee-dealer's station as a method of selling gasoline through the dealer. The settlements also provide for proper notice to the public whenever the dealer purchases gasoline from an outside source.

Finally, the settlements addressed the utilization of "minimum purchase" requirements by the defendants as a device to require exclusive purchases. Before these settlements, certain defendants required that their lessee-dealers purchase specified minimum amounts of gasoline from the lessor. These minimums were often set at such a high level that it was either impossible or economically unfeasible for a lessee-dealer to debrand or install

separate tanks and pumps. These settlement agreements abrogate such requirements. Although most agreements require that the lessee-dealer purchase some gasoline from the lessor, the specified quantities cannot be such as to cause debranding or installation of separate tanks and pumps to be impracticable. Otherwise, the agreements would be breached. This is because the settlement agreements expressly state that "the express terms of its [a defendant's] leases and motor fuel sales contracts, whether taken individually or together, do not and shall not require... [the] lessee dealer to purchase his entire requirements of motor fuels from [his lessor]". [emphasis added]. The settling defendants do not agree with this interpretation of the settlement agreements. The proposed bill will settle this issue.

Most of the agreements require that a "representative amount" of the lessor's gasoline be sold at its lessee-dealer's stations; "representative amount" is defined as purchasing and selling the lessor's gasoline so as to continuously offer for sale utilizing the lessor's tanks and pumps, all grades of the lessor's gasoline "in such quantities as are necessary to satisfy customer demand for those grades." Thus, as long as the lessee-dealer has on hand sufficient quantities of all grades of lessor's gasoline to meet his customers' demand for that gasoline, he satisfied the requirements of the agreements. Other than that, there is no minimum requirement.

The net effect of the Bogosian settlements is to provide an opportunity to a lessee-dealer to purchase some gasoline from a source other than his lessor. This opportunity affords the lessee-dealer a leverage on his lessor to sell him gasoline at a more competitive price, something he did not have before the settlements. If the lessor does not respond to that, the lessee-dealer has the opportunity to purchase less gasoline from his lessor and more competitively priced gasoline elsewhere under the specified conditions. Thus, these equitable provisions of the settlement agreements introduce a downward price pressure mechanism which previously did not exist.

I have described the Bogosian litigation and the settlements in this detail because I believe they are crucial to the bill now pending, H.R. 3824. The thrust of the bill is to eliminate the requirement that dealers purchase all their gasoline from their suppliers. The bill specifically makes it unlawful for a producer or refiner to require, or to conspire with others to require, that a dealer purchase more than 70% of his monthly sales of fuel from them or to prohibit the use or conversion of storage tanks and dispensers, provided that reasonable notice at the point of sale is given to the consumer.

I respectfully urge that this Committee adopt the "representative amount" requirement of the Bogosian Settlement Agreements in lieu of the 70% requirement of H.R. 3824. The 70% requirement has no relation to actual customer demand and would

appear to be so high a requirement as to make impracticable the dealer's opportunity to debrand or install separate tanks and pumps. Open supply must become a reality in order for the dealer level in the market place to be a competitive influence on prices of gasoline sold to the public.

Other than the 70% requirement, the provisions of H.R. 3824 are all consistent with the Bogosian settlement which demonstrated that giving dealers freedom to purchase supplies from other sources is viable and presents a system under which the oil companies can live. The Bogosian settlements are limited to five years duration. This bill, H.R. 3824, would make the benefits of the Bogosian settlement permanent.

Indeed, Judge Donald W. VanArtsdalen, the eminent Federal Judge who so conscientiously presided over the Bogosian case, noted at the hearing for preliminary approval of the settlements that it was specifically the province of the legislature and not the judiciary to address the problems now addressed by H.R. 3824. Judge VanArtsdalen stated:

"It is at least my view of the law that the judiciary is in a particularly poor position to try to restructure major industry in the country, on some economic grounds, and at least as I understand the law, the only thing that we are permitted to do, and are required to do, where there's a violation, is to take such steps as may be necessary to prevent a continuing violation."

I submit that the corrective action should be taken by congress.

Thank you for your continued courtesies.

Mr. MAVROULES. The next witness, Mr. John Umbeck—John, would you proceed?

TESTIMONY OF JOHN R. UMBECK, ECONOMIST, SCHOOL OF BUSINESS, PURDUE UNIVERSITY

Mr. UMBECK. Mr. Chairman, members of the committee, my name is John Umbeck, and I am an economist from the school of business at the Purdue University. I have been studying retail petroleum marketing practices for almost 5 years now, and I have been invited by your committee to present my views on H.R. 3824.

I have testified here before on similar bills. At those times I have offered scientific evidence from my research in the State of Maryland and Delaware on two important points—one, the alleged unfair practices addressed by this bill do not exist, and two, the bill designed to remedy these imaginary practices would lead to higher prices and less service for the consumer.

Now as I mentioned, since I have testified before, this evidence is on record and has been published since then in three different public journals. Therefore, I will take this time only to summarize briefly my conclusions and for those interested, a copy of the complete study would be made available on request.

Mr. MAVROULES. I want to say at this time for all witnesses who have written testimony, with no objection by the members, the entire statement will be included in the record. The record shall remain open. Now I don't have to keep repeating that all morning.

Please continue.

Mr. UMBECK. Thank you. Briefly summarizing, I found that in the State of Maryland which implemented divorcement legislation in the summer of 1979, retail gasoline prices rose and hours of service fell at those refiner-operated stations when they were turned over to a lessee dealer.

Furthermore, at stations located in the vicinity of each of these divorced stations, prices also increased due to reduced price competition.

While I have summarized my original research, I would like to take a few minutes just to discuss a report that was recently put out by the Service Station Dealers of America in which they claim to offer new evidence on the effects of divorcement legislation in the State of Maryland.

In addition, their report claims to point out some analytical errors in my own study of Maryland. In particular what I would show is that these alleged errors in our study are not errors at all but arise out of the dealers' misunderstanding or misrepresentation of my research, and two, that the new analysis offered by the dealers has absolutely nothing to do with divorcement in Maryland.

Point one, the dealers claim that the long-term effects of divorcement are not clear due to the fact that no one has undertaken a study of them.

This claim is false. My study did follow Maryland divorcement effects through the end of 1982 after all stations had been divorced and deregulation had been implemented. The effects from my study are very clear. Divorcement led to higher gasoline prices both in the short and the long run.

The dealers implied that these results are biased because this was an oil industry study. This is false. The initial phases of my study were funded by Purdue University and the State of Indiana. Only later did any oil companies become involved. After their involvement ended, various aspects of our report were published in three different academic journals, and for each of these research efforts we were funded by Purdue University.

The dealers claim that our findings of shorter service hours at divorced stations is wrong because refiners have the right to set station hours for their lessee dealers. This was testified to also today.

This is false. Refinery leases do not stipulate a maximum number of hours the station is to remain open. The fact is that the new lessee dealer of divorced stations in Maryland chose to remain open fewer hours.

The dealers claim that Maryland motorists are better off because gasoline price margins are lower there than in other States. This was also testified to today.

This claim is also false. It is false for two reasons—first, retail prices, not margins, are important to the consumer.

Second, the dealers' analysis does not consider margins before and after divorcement. This would be necessary to determine the actual effect of divorcement legislation on the margins.

The dealers claim that Maryland retail gasoline prices are among the lowest in the country because of divorcement. This claim is false. Using the data they offer, it is impossible to statistically conclude anything about Maryland prices relative to other States or Maryland prices before and after divorcement.

Now, having heard so much contradictory evidence today, it is probably difficult to weigh the various arguments that have been presented.

As an academic, one of the tools we use in considering various facts is what we would call logic. Let me just point out a couple of contradictions that I have observed as an outsider today hearing the various claims that have been made.

We have heard that the big oil companies have used predatory pricing to squeeze the dealer margins by offering retail prices at such a low level that they cannot compete, and yet at the same time we are told that divorcement legislation in Maryland lowered margins and lowered prices.

Now if we are to believe the dealers want divorcement legislation, we have to believe that they have adopted some sort of strange masochistic tendencies and that what they are not going to allow big oil to do, they are going to allow legislation to do to them, namely, drive margins and prices down.

This is absurd. We have also heard today that the value of guaranteed supplies from the big oil companies and their lease arrangements are almost zero, that the dealers want the right to purchase from anybody that they would like to purchase from at the lowest price at any time on the spot market, and yet we have also heard a good deal of testimony today that when oil companies pack up and leave a region the dealers are very upset that now they have lost their guaranteed supply arrangements.

You can't have it both ways. You have to have one or the other or better yet, they can have their cake and eat it, too. They can lock the refiners into guaranteed supplies but only when the dealer wants them. Otherwise they would be free to buy from whomever they please.

One of the other issues which I would address was a question raised by Mr. Bedell when he was talking about the use of force, and the claim was that the oil companies are so big that they can force their dealers to buy only their gasoline and apparently there is nothing in this market that we live in today in the United States that would lead the oil companies to grant open supply if that were to be advantageous. Let me just point out this fails to recognize the single most powerful force in the U.S. economy today—the force that the consumer has to walk away.

Right now we have thousands of open dealers in the United States, dealers who right now have the right to multiple brand or change brands at any time they want to, and yet they typically do not exercise that option even though they have that right.

Let's suppose for a minute that open supply would really bestow all the benefits that were just testified to, that it would lead to lower prices following the *Bogosian* settlement. Let's suppose that is really true and that by having open supply we can have more competitive markets.

That would suggest that open dealers would be able to supply lower prices. At lower prices, consumers would shop from those open dealers and realize gains to the consumer and those big, powerful oil companies who can force their dealers to buy only from them would lose market share.

The force operating to lead to open supply would be very powerful indeed, and those big oil companies if in fact this was truly a more consumer-oriented way of supplying gasoline, the open supply would quickly emerge and the big oil companies would be forced to offer it to their dealers or lose their market share to these dealers who currently have this right.

That concludes my testimony, and I will be glad to answer any questions.

[Mr. Umbeck's prepared statement follows:]

PREPARED STATEMENT OF JOHN R. UMBECK, ECONOMIST, SCHOOL OF BUSINESS,
PURDUE UNIVERSITY

A RESPONSE TO
THE
SERVICE STATION DEALERS OF AMERICA
PRICING ANALYSIS
OF
RETAIL SERVICE STATION DIVORCEMENT AND CONSUMER PRICES
BY
PROF. JOHN R. UMBECK
PURDUE UNIVERSITY
(2/23/86)

A recent report by the Service Station Dealers of America claims to offer new evidence on the effects of divorcement legislation in the State of Maryland. In addition, their report claims to point out some analytical errors in my own study (Barron-Umbeck) of Maryland. The purpose of this paper is to respond to these claims point by point. In particular I will show that 1) the alleged "errors" in my study are not errors at all but arise out of the dealers misunderstanding (or misrepresentations) of my research and 2) the new "analysis" offered by the dealers has absolutely nothing to do with divorcement in Maryland.

1) The first major claim the dealers make is that there has been no study of the long term effects of divorcement. They cite a 1984 draft of a D.O.E. report on deregulated gasoline marketing as saying that "the long term effects of divorcement are not clear, due to the fact that *no one has undertaken to study them.*"

There are several things wrong with this claim. First, their citation is taken out of context. The D.O.E. report is referring to the theoretical problems in predicting long term effects of divorcement. In fact, this report concludes that "divorcement laws... result in inefficient distribution and higher gasoline prices." Second, the Barron-Umbeck report *did* study the long term effects. Third, the long term effects are clear: divorcement leads to higher retail petroleum prices. This will be explained next.

In economic theory there is a good deal of misunderstanding about the concept of "long term" or "long run." Many people think it is some well defined period of time, like ten years. In actuality, this term refers to a market condition in which the actors are relatively free to enter or exit a particular industry following some changes in market circumstance. These conditions vary significantly across different industries.

In the retail petroleum market, three years is an eternity. Given the characteristics of this market, newcomers can enter in a very short period of time. This is partly because of the availability of "excess" service stations in most markets and the availability of refined petroleum products. Exit is equally quick. We have witnessed several major oil companies withdraw from hundreds of stations in a period of one year. Given the speed with which the players in this market react to charges, the long run is well under three years.

As reported in the Barron-Umbeck study, we surveyed the State of Maryland in 1981 and again in 1982, over three years from the date of divorcement and after deregulation. We found that retail prices at divorced stations, along with the prices at their nearby competitors, were still higher, three years after divorcement, than they were before divorcement.

Therefore, the dealers claim that "...no study has considered the effects of divorcement since its full implementation in Maryland at the end of November, 1981, and the end of federal regulations at the end of January, 1981" is false.

2) By labeling our study "an oil company study" there is the implication of possible bias. Of course similar reasoning would suggest that their own "study" is equally biased. However, beyond that, our study was NOT funded exclusively by oil companies, and even when some oil companies were involved, they were not always "big" oil.

The study was initiated by me without any oil company support. The first stages were funded by Purdue University and the State of Indiana as part of my normal research program. When it became clear that the information required for this study would be costly and impossible to obtain without oil company support, a group by the name of "CIRM" (Committee of Independent Refiner Marketers) agreed to help. These refiner-marketers were mostly small, regional companies that have been exempt from most of the proposed divorcement legislation.

The CIRM funding lasted for about four months and then expired. Purdue University funded the next eight months. In the fall of 1982, Atlantic Richfield agreed to finance a resurvey of Maryland to test for the long run effects of divorcement legislation. This funding lasted for about three months. Purdue funded the last year of the project, in which the results were finally written up and published.

The results have now been published in at least three different academic journals. To be published in these journals, the papers are refereed by a variety of experts in the fields of marketing, economics and statistics. The fact that they found no problems with our studies speaks for its quality.

Despite the fact that numerous experts in the field have certified our study, the dealers claim to have found some serious problems. These are discussed below.

3) The dealers argue that we overlooked "**mandatory predatory pricing**" which existed during part of the regulation period. They point out that "The Department of Energy regulations limited the margin or mark-up on a gallon of gas to 10.5 cents per gallon for company-operated stations and 15.4 cents per gallon for dealer-operated stations. This was implemented on July 15, 1979, two days after divorcement took effect." They go on to say "It is no wonder that, as the Barron-Umbeck study stated, 'immediately after divorcement, prices rose at the divorced stations.'"

There are several things wrong with the dealer claims. First, while the dealers are correct in their description of the margin limits, what they do not say is that just two weeks later, on August 1, 1979, the D.O.E. raised the legal mark-up for company-operated stations to 15.4 cents, the same margin allowed dealers. From that date on, the company stations were allowed the same margins as the dealers, until deregulation. Except for this two week period in 1979, *there was in fact no "mandatory predatory pricing"*.

Also, the dealers report does not point out that, except for a few months in the later part of 1979 and early 1980, dealers in Maryland were not even close to their legal margins. In other words, throughout most of the regulation period, dealers and company stations could have raised their prices and still been within their legal limits. Why didn't gasoline marketers raise their prices? Because competition was forcing them to keep prices well below the legal ceilings.

In order to adjust for those months in 1979 and 1980 when gasoline prices were at or close to the legal margin limits, we (Barron-Umbeck) deleted those months from our observations to see if it had any effect on our conclusions. The deletions did not alter our statistical results at all! Divorcement legislation still led to higher prices.

One very important point to remember is that not all stations were divorced at the same time. In fact, many stations were divorced well before the legal deadline in July 1979. Similarly, several refiners asked for and received extensions on their legal divorcement date, some extending more than one year.

What this means is that studies trying to capture the effects of divorcement on July 13, 1979, or any other single date, will be flawed. The only way to isolate and measure the effects of the law is to go to each of the divorced stations and examine what happened just in that market. That is exactly what we did. Also notice that several stations divorced before and after the time period when the prices were at their legal margin limits. This means that at those particular stations, margin regulations were not a factor.

We found that gasoline prices increased after divorcement. The dealers claim that "The combination of short supply and gas lines in Maryland at that time, with the new federal regulations, mandated this result." The evidence says that they are wrong. The research methodology that we used allowed us to isolate just the effects of divorcement, and those effects are quite clear: Divorcement legislation led to higher gas prices. This was true immediately following divorcement at any particular station, and it was still true at the end of 1982, over three years after the law went into effect. This was well after the market had adjusted fully to decontrol in January 1981. Moreover, the regulation never required pump prices to go up. Hence, D.O.E.'s rules can not be responsible for prices rising at divorced stations.

4) We found in our study that divorced stations reduced the hours of service which they provided to Maryland consumers by about 8 hours per week. In their report, the dealers seem to be saying that our findings are wrong because PMPA allows the refiners to set the hours at their leased stations. This is a strange argument that is difficult to understand.

In our article, which appeared in *Regulation*, we made no assumption about who could set the hours. In the article in *The Journal of Law & Economics*, we assumed that dealers could set their own hours. This last assumption was made only to simplify the exposition of the theoretical section. In fact, from the point of view of our conclusions, it is totally irrelevant who determines the hours of operation.

Divorcement legislation divorces the refiner from the retail price decision. The lessee-dealer can now determine the pump price. Once the dealer raises prices, less gasoline will be sold per hour of operation. Regardless of who sets the hours, the refiner or the dealer, it will be less profitable to remain open as many hours at the higher prices. Therefore, divorcement was followed by increased prices which in turn led to shorter hours. The dealers could only be correct if it were demonstrated that refiners required lessee dealers to operate fewer hours than company-operated stations. We do not know of one case where a refiner set a maximum number of hours on their dealers.

The Maryland data shows that divorced stations closed earlier after divorcement. The numbers are statistically significant. The dealers argument that PMPA allows refiners to set hours has nothing to do with our theoretical conclusions or the factual findings.

5) Our study reported that 11% of the divorced stations in our sample were closed rather than divorced immediately following the implementation of divorcement. By the end of 1982, in our resurvey report, we noted that about half of these stations had reopened. We do not disagree with the dealers claims that some of these closed stations were put back into operation, that is consistent with our own reported findings. However, we do not have the information required to confirm their claim that "Only two obsolete 50-year old units actually closed."

It is one thing to demonstrate that the stations closed because of divorcement. It is entirely different to claim that they reopened because of the long run effects of divorcement. Our study shows that the closings coincided in every case with the date of divorcement. We have shown, theoretically and empirically, that divorcement led to these closings. Yet, there is no theoretical or factual basis for the claim that the subsequent reopening, six years later, has anything to do with divorcement. The reopenings could have been prompted by deregulation, lower crude prices, decreased rates of inflation, reduced levels of unemployment, increased local demand, other station closings in the area, or any of the numerous changes which have occurred in the market since 1979.

6) Over the last three years I have been asked to extrapolate from the Maryland experience and "predict" the likely consequences of divorce laws in other states and at the federal level. Of course, the last three years have seen many changes in the retail petroleum market and the predicted effects will vary with market conditions.

The dealers have claimed that my predictions are either wrong or misleading for at least two reasons. First, one of my predictions was based upon the explicit assumption that the full-serve/self-serve ratio was 2 to 3. The dealers point out that the actual ratio is 1 to 4. While they may be correct in stating that the national average in 1985 is 1 to 4, to say that I am in error is to ignore the fact that each of my estimates has covered a different point in time and in some cases been limited to individual states. For example, in West Virginia we assumed that the ratio was 2 to 3 because in 1984 that was the reported ratio. In South Carolina, we assumed that company-operated stations sold no full-serve gas, 100% was self-serve, while lessee-dealer stations were selling at 2 to 3. Similarly, in the State of Washington, I assumed that company-operated stations sold only self-serve, while the average lessee-dealer sold 82% self-serve and 18% full-serve. In each case, these assumptions were based upon the actual conditions prevailing in those markets at the time.

In other words, these ratios vary significantly around the country and through time. I try to use the latest estimates in making my predictions. To compare an earlier prediction with the latest statistics, like the dealers are doing, would distort the true nature of my research.

The dealers go on to state that we claim that self-serve is a preferred, more efficient way of operation. That is just not correct. We do state that for many consumers self-serve is preferred over full-serve, but that is just a statement of fact judging from the choices consumers make. We also state that under some conditions company-operated, self-serve stations are most efficient. But we also make it clear that under some conditions, full-serve, lessee-dealers are more efficient. That is why many refiners operate both kinds of stations simultaneously.

However, the dealers argue that consumers who purchase gasoline at full-serve stations consider more than just the price. Therefore, it is "inherently misleading" to claim tremendous costs to consumers based on full-serve price increases (induced by divorce) when full-service consumers do not have price as a primary consideration. This is truly one of the strangest arguments I have ever seen. What they are saying is that if I buy full-serve gasoline at \$1.20, because I prefer the service, and now divorce forces prices up to \$1.25, that I should not count that price increase as an extra cost. Of course it is an extra cost. Just because I continue to buy at full-serve pumps does not mean I do not pay the added 5 cents per gallon.

In the next two sections, I will examine the dealers price analysis.

The dealers state that they reviewed the best available data from the Lundberg organization in order to measure the effects of divorcement on dealer mark-ups and retail prices. They claim to show that, in Baltimore, the dealer margins and the retail prices are lower than in most other states, especially on the east coast. I will examine their margin analysis first.

7) The dealers claim that margin analysis "...is critical because the dealer has no control over wholesale costs such as for the product, transportation etc.; he controls **only his margin** and it is only his margin which is effected by divorcement." There are several problems with their analysis.

A. If you want to know what effect divorcement had on gasoline prices you should examine prices, not margins. Margin analysis is irrelevant. By analogy, this could be compared to a doctor who examines his patient's feet when the patient is complaining of eye problems. Finding his feet to be healthy, the doctor tells the patient that his eyes are okay. The dealers are claiming that because margins are now relatively low in Maryland (a fact I will contest shortly), retail prices must have fallen because of divorcement.

B. Even if margins were important in assessing the effects of divorcement, we would have to know what the margins were **before and after** the law was enforced. Just looking at margins after divorcement (1982-1984) tells us nothing about the divorcement effects. To continue my analogy, the dealers analysis is like a doctor who wants to determine if a new medicine is effective. Examining 100 patients only after they have taken the new drug, he finds that 90 of them are healthy. The dealers would apparently conclude that the drug helped 90 of the patients. But of course, we can not conclude this without knowing how many patients were healthy before taking the drug. If 85 were healthy before, then the drug actually harmed some of the patients.

C. The measure of "margin" used by the dealers is flawed. Judging from their report, they have calculated the margin by subtracting the reported dealer tank wagon price (DTW) from the retail pump price net of all taxes except the federal tax of 9 cents per gallon. In their report, they compare Baltimore margins to those in Indianapolis, Indiana. These comparisons are inappropriate. For example, in Indianapolis, over one third of the gas stations sell gasoline blended with ethanol. This blended gasoline is exempt from 6 of the 9 cent federal tax. Other things equal, the actual margin at an Indianapolis station is 6 cents per gallon larger than reported by the dealers. Their measure of margin is flawed by its inability to account for this type of difference.

D. Even without all of these problems, the dealers measures are used inappropriately. Given the way Lundberg collects and reports the DTW, it is impossible to infer anything about the relative margins across states.

Lundberg instructs his price surveyors to ask six dealers of each brand what they paid for their gasoline (DTW). Lundberg then selects from those six figures the one he "believes" most accurately reflects the "true" DTW for that brand. This is the number he reports in his publications. There is no indication that this number is adjusted for TVA's, rent rebates or other refiner discounts or special programs.

This number is not the arithmetic mean of a randomly sampled station population. There is also no variance reported. As a result, it is impossible to compare any two DTW figures and statistically infer anything about their relative sizes. None of the reported "margins" can be compared and statistically analyzed. Any analysis would be meaningless, including that done by the dealers.

8) The dealers have also claimed that current retail gasoline prices in Maryland are among the lowest in the country. This, they argue, is proof that the long term effects of divorce legislation are beneficial to consumers.

Of course, for reasons already explained in point #7, their claims are nonsense. Accepting, for the time, that the current retail prices in Maryland are lower than other states, there is no reason to believe that this is because of divorce. To determine the effect of divorce would require *before and after* prices and this the dealers have not done. In fact, regardless of current prices, our study has shown that Maryland prices would be even lower than they are today if there had been no divorce law.

Let us take a closer look at the evidence offered by the dealers on Maryland prices. Attached at the end of their report are several lists of prices collected from the July, 1984, Lundberg letter. These are reportedly the average retail pump prices, net of all but federal taxes, from a sample of service stations within each of the major cities listed.

Unlike Lundberg's DTW, the retail prices are taken from a survey of a large number of stations within any geographic area. The prices reported are arithmetic means of sampled prices. Looking at the chart for "regular leaded self-serve," Baltimore appears to have an average price lower than the average of non-divorce cities on the east coast.

However, keep in mind that these are average prices taken from a sample of some population. In order to determine whether prices in Maryland are probably lower than in other states, it is necessary to know not only the average or mean value of the sample, but also the sample variance. And, while I am sure that Lundberg has these variance measures, he does not publish them. Without them it is impossible to statistically determine the likelihood of Maryland prices being lower than in other states.

To better illustrate my point, consider the sample of east coast, non-divorcement states selling regular, leaded, self-serve gasoline. The average value of the sample means is 94.34 cents, the variance is 8.28 and the standard deviation of this distribution is 2.88. The average price reported from the Baltimore sample is 92.15 cents or 2.19 cents lower than the average for the other states. ***Can we conclude, at confidence levels normally accepted by statisticians, that prices in the state of Maryland are lower than in other states? The answer is no!*** If we assume that the variance in retail prices within the state of Maryland is the same as the variance in state averages (a necessary assumption since Lundberg does not publish sample variance), we can not statistically reject the possibility that prices throughout the state of Maryland are the same as in other states on the east coast.

In other words, using the dealers own data on Baltimore prices, we can not conclude that Maryland prices are relatively low. ***The dealers claim that "The best available statistical evidence shows...in Baltimore, Maryland, consumer prices have not risen; rather, they are among the lowest in the nation" is false. Not only did they perform no statistical tests, but when such tests are performed, their claims are refuted.***

I would also point out that the list of cities in the dealers price study does not include Philadelphia. A comparison of retail gasoline prices through December, 1984, net of taxes, shows Philadelphia to be much lower than Baltimore since divorcement was implemented. In testimony presented October 9, 1985, on Senate Bill S.1140, a spokesman for the Atlantic Richfield Company showed that average self-serve prices for leaded regular in Philadelphia, in December, 1984, were 4.07 cents lower than in Baltimore. Average full-serve prices for leaded regular were 19.54 cents lower in Philadelphia than in Baltimore. Similar differences were noted for unleaded regular. Why did the dealers omit Philadelphia from their price study? Is this a case of "opportunistic selection"?

It is interesting to note that in the Lundberg letter of February 7, 1986, the states are ranked by average ***weighted*** ex-tax gasoline prices and Maryland is 10th highest in the country. In these calculations, adjustments have been made for both the ethanol tax exemption and the volumes of gasoline sold full and self-serve. In fact, in the 10 highest priced states, 4 have divorcement. This includes Washington, D.C., Connecticut, Virginia and Maryland. However, for reasons I pointed out above, I must still argue that without sample variance it is impossible to claim, using just the Lundberg data, that prices in Maryland are higher or lower than in other states.

9) I would like to make one final point, which I have made several times before, but it is worth repeating again. Dealers all over the country have been leaving the industry over the last 10 to 15 years. They claim that they are being driven out by unfair competition from company-operated stations. They claim that these company stations offer consumers gasoline at prices so low that if matched by the dealers it would leave them profit margins insufficient to remain in business.

To protect themselves, dealers want divorce legislation similar to that passed in Maryland. They argue that this law would lower prices and margins just as it allegedly did in Maryland. We are supposed to believe that they want a law which will lower prices (which they claim are already too low) and reduce their margins (which they also claim are already too low.)

Logic alone would force us to one conclusion: Divorce legislation in Maryland led to increased prices and the dealers are very well aware of this fact. By eliminating low-priced, company-operated stations, dealers can increase their prices and margins in divorce states. That is why they are spending thousands of dollars to influence legislators to pass this type of law.

Mr. MAVROULES. Thank you very much, Mr. Umbeck. The next witness, Phillip Chisholm, Mr. Chisholm, if you would proceed, please?

TESTIMONY OF PHILLIP R. CHISHOLM, EXECUTIVE VICE PRESIDENT, PETROLEUM MARKETERS ASSOCIATION OF AMERICA, WASHINGTON, DC

Mr. CHISHOLM. Thank you very much, Mr. Chairman. My name is Phillip Chisholm. I am the executive vice president of Petroleum Marketers Association of America, which is formerly the National Oil Jobbers Council.

First, I would like to apologize. The president of PMAA, Mr. Tom Potter, would very much like to have been here and delivered this testimony, but unfortunately he had a previous commitment which he could not break.

I think the subcommittee has heard a great deal this morning about the nature of the petroleum marketing industry, how it is changed, how it exists today. I have sat through a number of these hearings and I find that afterward, people tend to be more confused than ever about what is actually going on in the marketplace.

There have been some rather dramatic changes that have occurred in gasoline marketing since 1981 when the Executive order to decontrol occurred.

I think in summary you can conclude, one, that there are fewer gasoline dealers. There are fewer gasoline jobbers, and there are fewer gasoline refiners, and there are fewer major oil companies today than there were in 1981.

The independent marketers PMAA represents, sell roughly half the gasoline and three quarters of the home heating oil consumed in America. We represent some 11,000 different marketers throughout the country. Those independent marketers are not particularly happy with some of the changes that have occurred and they have been very vocal in that unhappiness and have supported different forms of legislation to try to deal with those particular problems.

They have been concerned about discriminatory pricing, allocation practices that are the reverse of some of the things the dealers have talked about. They have been concerned because in some markets the dealers with gasoline delivered into the station have been

given a better price than the wholesaler has at the rack where he has to purchase it and transport it to his own stations.

They have been concerned about discriminatory allocation practices that gave dealers preference in allocation of supplies over what the jobber may be able to obtain. So in discussing the legislation before the subcommittee today, I would like to point out that although we are not terribly pleased with a lot of things that have occurred in the gasoline marketing since decontrol, at the same time we do not see H.R. 3824 as being the solution to those problems, and there are three fundamental reasons for that.

The first reason is just a philosophical concern our members have that no one should be prohibited from participating in the marketplace, that we don't care who we go head to head with. Our members believe they are the most efficient marketers for transporting product from point A to point B. They are in the business, and they will compete with anybody. They would like to have a more level playing field where everyone starts at the same starting block, but certainly from a competitive standpoint, they do not fear competing with any major integrated company or any refinery from that standpoint, and therefore see no real need to eliminate them from the market.

The second reason why our members do not support retail divorcement is that the evidence does not exist in our opinion to indicate that it is a national problem. If you look at the performance profiles of major energy producers that is put out annually by the Department of Energy and you look at the latest edition in 1984, what you will see is that the market share of refiner direct-operated stations of the largest 25 energy producers is only about 13.1 percent. Now you compare that to 1983 and it was about 13.6 percent. You go back to 1982 and it was about 13.1 percent.

That's higher than it was in 1977, but still I don't think you can see a trend line illustrating dramatic increases in the volumes of gasoline going through refiner direct-operated stations, particularly in regard to the top 25 energy producers which this legislation would tend to directly affect.

In addition, the number of retail outlets that are directly owned and operated by major integrated companies have not increased and they are in fact declining from about 8,200 in 1982 to something in the neighborhood of 7,800 in 1984.

The third reason why PMAA does not support retail divorcement, and Mr. Mavroules, you raised the question earlier about what had been the impact in other States—we have asked our marketers in Maryland and Connecticut and in other States with retail divorcement how has it helped them? How has it benefited their ability to operate in the market? And what we have found is the marketers in those States report back to us the same problems, the same concerns that marketers in every other State have reported back to us. It does not appear to be a solution to the concerns that many of our members tend to have.

That is not to say there may not be some marketers in the country and some areas of the country where refiner direct-operated stations do present a substantial problem, and if that's the case, that's an appropriate area for State legislatures throughout the country. This issue has been aired in State legislatures throughout

the country and these legislatures can make the decision at that level whether retail divorcement is needed.

On the question of open supply, PMAA understands the desire and can sympathize with the desire of the dealer to have the right to purchase products anywhere they would like. Our members realized they were going to have to do that several years ago and they have done it, but we did a survey in 1984 which indicated that the average petroleum marketer that PMAA represents has four different suppliers. This has been an economic necessity in terms of their ability to survive.

Our independent marketers are considerably different than dealers in several respects. One of the most important is that even though they buy from different suppliers, they are very careful not to comingle product. They do not buy from refiner A and sell it at a station with refiner B's trademark on it.

They have also opened their own unbranded stations at which they can buy product from anyone and take it and sell it in an unbranded fashion, but they pay a valuable degree of respect to the trademark.

The other concern from the open supply standpoint is the value of the trademark itself and what it's worth. There has been a big debate in this industry for a number of years about the fungibility of gasoline and is all gasoline the same? And you have heard testimony this morning that consumers tend to believe that it is, and I'm not going to dispute that or tell you that all gasoline is different. I don't know.

I know the major companies argue that there are certain additives that they add to distinguish their gasoline from any other.

What I do know is that if a refiner sells gasoline under a trademark to a dealer, he is certifying the quality of that gasoline to meet the specifications he sets, whether that gasoline is refined by that refiner or some other refiner. If a dealer buys that gasoline independently, there is no way to certify the quality of that gasoline. This is becoming increasingly a problem in a market where there is the lead phase out, and other areas in which the quality of gasoline may again become an issue because of different additives and different blending components that are now being added to gasoline in some markets. So the issue of open supply is not as simple as it may first seem.

If a consumer buys unbranded product at a station, with a major brand trademark and he has problems with the operation of his automobile, is the major oil company liable in that type of instance? There are a lot of questions that really need to be raised in regard to open supply.

In conclusion, Mr. Chairman, I would say that while we understand a lot of the motivation, a lot of the desire of the dealers in support of retail divorcement and open supply, we don't think this bill is the answer and that there is alternative legislation, which I won't go into unless the committee is interested, which we feel would better address some of the concerns that are in the market today.

Mr. MAVROULES. If we ask you that question for the record, would you reply to it?

Mr. CHISHOLM. Yes.

[Mr. Chisholm's prepared statement follows:]

PREPARED STATEMENT OF PHILLIP R. CHISHOLM, EXECUTIVE VICE PRESIDENT,
PETROLEUM MARKETERS ASSOCIATION OF AMERICA, WASHINGTON, DC

PREFACE

The Petroleum Marketers Association of America is a federation of 41 state and regional trade associations representing 11,000 independent small business petroleum marketers. Members include gasoline and diesel fuel wholesalers, commissioned distributors of gasoline, gasoline reseller-retailers and a large number of retail fuel oil dealers. Members also wholesale or retail many other petroleum products including kerosene, LP gas, aviation fuels and motor oils, as well as residual fuel oil. Together our marketer members sell approximately 50 percent of the gasoline and 75 percent of the home heating oils sold in America under either their own private brand or the trademark of their supplier.

MEMBERS OF THE PETROLEUM MARKETERS ASSOCIATION OF AMERICA

The Petroleum Marketers Association of America represents the independent petroleum marketers who are members of these state and regional trade associations:

Alabama Oilmen's Association
 Arizona Petroleum Marketers Association
 Arkansas Oil Marketers Association, Inc.
 California Independent Oil Marketers Association
 Colorado Petroleum Marketers Association
 Independent Connecticut Petroleum Association
 Florida Petroleum Marketers Association
 Georgia Oilmen's Association
 Idaho Oil Marketers Association
 Illinois Petroleum Marketers Association
 Indiana Oil Marketers Association, Inc.
 Petroleum Marketers of Iowa
 Kansas Oil Marketers Association
 Kentucky Petroleum Marketers Association
 Louisiana Oil Marketers Association
 Michigan Petroleum Association
 Mid-Atlantic Petroleum Distributors Association, Inc.
 Mississippi Petroleum Marketers Association
 Missouri Oil Jobbers Association
 Montana Chapter, Western Petroleum Marketers Association
 Nebraska Petroleum Marketers, Inc.
 Independent Oilmen's Association of New England
 Fuel Merchants Association of New Jersey
 New Mexico Petroleum Marketers Association
 Empire State Petroleum Association
 North Carolina Petroleum Marketers Association
 Northwest Petroleum Association
 Ohio Petroleum Marketers Association
 Oklahoma Oil Marketers Association
 Oregon Petroleum Marketers Association
 Pennsylvania Petroleum Association, Inc.
 South Carolina Oil Jobbers Association
 South Dakota Petroleum Marketers Association
 Tennessee Oil Marketers Association
 Texas Oil Marketers Association
 Virginia Petroleum Jobbers Association
 Washington Petroleum Marketers Association
 Western Petroleum Marketers Association
 West Virginia Petroleum Marketers Association
 Oil Jobbers of Wisconsin, Inc.
 Wyoming Petroleum Marketers Association

The Petroleum Marketers Association of America is located at 1120 Vermont Avenue, N.W., Suite 1130, Washington, D.C. 20005. Telephone (202) 331-1198.

Good morning, Mr. Chairman and members of the Subcommittee. My name is Phillip R. Chisholm and I am Executive Vice President of the Petroleum Marketers Association of America in Washington, D.C.

The Petroleum Marketers Association of America (PMAA), formerly the National Oil Jobbers Council, is a federation of 41 state and regional associations representing approximately 11,000 independent petroleum product marketers. The marketers represented by PMAA sell approximately half the gasoline, 60 percent of the diesel fuel and nearly three quarters of the home heating oil consumed in America today.

Although virtually all of the marketers we represent are small businessmen, if their collective assets were combined, they would rank 17th on the Fortune 500 list of companies ranked by assets and 13th among domestic oil companies. And while many of the major integrated companies have the bulk of their assets in refining and production, marketer assets are tailored almost exclusively toward marketing properties. These investments establish very clearly why independent marketers desire to see a strong competitive marketplace exist where the most efficient marketer can survive.

I am pleased to have the opportunity to appear before the Subcommittee today to discuss HR 3824 introduced by the distinguished gentleman from Iowa, Mr. Bedell. It was with sadness that PMAA learned that Mr. Bedell is retiring from Congress. He has been a valuable advocate for small business interests during his tenure in Congress. He also is one of the House of Representatives' more knowledgeable members about issues relating to gasoline marketing. He will be sorely missed.

In discussing the issue before the Subcommittee today I would like to first provide a little background in the petroleum marketing industry in general and where the independent marketers represented by PMAA fit into that industry. Secondly, I would like to discuss gasoline marketing since decontrol focusing specifically on recent market developments. Third, I want to discuss the specifics of HR 3824 and why PMAA believes it is an inappropriate remedy for the problems which exist in gasoline marketing. Finally, I would like to discuss some alternative solutions which may address these problems.

GASOLINE DISTRIBUTION

The petroleum marketing industry is very complex and even the most knowledgeable observer can become lost in the maze in which petroleum products are distributed. Since the focus of today's hearing is motor fuel marketing, I will limit my explanation of the distribution process to just motor fuels.

Motor fuels - primarily gasoline and diesel fuel - are produced from crude oil at a refinery. Many refiners also produce much of the crude oil they refine. These are referred to as integrated refiners. Other refiners must purchase all of the crude oil they refine from a third party. These are generally referred to as independent refiners. On average, according to the American Petroleum Institute, approximately 47 percent of the crude oil barrel is refined into gasoline. Another 11 percent (approximately) is refined into diesel fuel.

These are, of course, average figures and include many smaller refineries that may make very little gasoline. Today's sophisticated refineries can generally provide gasoline yields of as much as a 60 to 70 percent.

Once the gasoline or diesel fuel has been refined, it then enters the distribution system. It is generally transported from the refinery by pipeline, truck or barge to a terminal. Once it reaches the terminal a refiner has several choices as to how to distribute the product.

The refiner may decide to distribute all of the product itself through direct operated stations. It would then transport the product to retail outlets it owns and operates or to other retail consumers. The refiner may decide to operate through retail service station dealers. In this instance, the refiner will generally transport the product to the retail dealer who will assume responsibility for retail sales to motorists. In most cases, but not all, the refiner will own the station operated by the dealer. The refiner will lease the station as well as the right to use its trademark or logo to the dealer as part of a franchise agreement. The price charged the dealer is called the dealer tankwagon price and included in that price is the price of product, use of the trademark and several other factors. Oftentimes many refiners may offer rebates off of the dealer tankwagon price if a dealer sells certain volumes of motor fuel. In addition to paying the dealer tankwagon price for the fuel the dealer also pays a rental fee for use of the station.

The refiner may also decide to distribute through an independent marketer. In this instance, the refiner can choose whether he wants to sell to the independent marketer on a branded or non-branded basis. Branded product refers to product which is sold under the refiner trademark.

The independent marketer who buys branded product also has a franchise agreement with the refiner. If the product is sold non-branded, then the marketer does not have the right to use the refiner trademark when he resells it. Generally, but not always, the price of branded motor fuel to an independent marketer is higher than the price of non-branded fuel, the difference being the branded marketer's right to use the trademark and the benefits that trademark may provide in a given market.

Once the marketer purchases the product, he can distribute it in several ways. If he has a franchise agreement with his refiner/supplier, he can resell the product to a service station dealer to whom the marketer also offers a franchise agreement. In many instances, as with refiners, the marketer will own the station and the franchise agreement will include the lease of the station. Marketers who act as a wholesalers of product to dealers are commonly known as "jobbers".

Like a refiner, a marketer may also decide to sell the product at a station or outlet he owns and operates. Such stations may be branded (carry a refiner trademark) or unbranded. These stations, whether they are operated by a refiner or a marketer, are generally self service and usually offer ancillary services such as convenience store items or a car wash. Marketers who operate exclusively through such stations are known as "chain retailers".

In many instances a marketer does a significant amount of his business with consumer or end user commercial accounts. These accounts may be agricultural, commercial or industrial. Marketers supply a high percentage of the agricultural fuels used in this country. They also supply product to truck fleets, police departments, military bases and many other bulk purchasers.

While some marketers consider themselves to be strictly "jobbers" - wholesaling product to dealers or other bulk purchasers - most marketers have diversified their businesses and distribute motor fuels in a number of ways. A recently completed survey conducted by PMAA shows that 35 percent of marketer motor fuel sales is to dealers; 30 percent is through direct operated stations; and 30 percent is to bulk end user purchasers.

Likewise, while some refiners sell their products almost exclusively through independent marketers and others rely on direct operated stations or through franchised dealers, many have a balanced distribution system relying on independent marketers, dealers, and direct operated stations. According to numbers compiled by the Department of Energy, nationwide the top 25 energy companies distribute 13.1 percent through direct operated stations; 33.67 percent through retail franchised dealers; and 47.4 percent through independent marketers.

Table I provides a breakout of how these percentages have varied since 1977, and 1982-1984.

TABLE I

Gasoline Distribution of Top 25
Energy Companies 1977-1984

Distribution Category	1977	1982	1983	1984
	Percentage of Total			
Wholesale/Marketer Volume	40.4 %	46.4 %	46.8 %	47.4 %
Retail Dealer	41.9 %	32.7 %	321.9 %	33.7 %
Company Operated	9.1 %	13.1 %	13.6 %	13.1 %

Source: Performance Profiles of Major Energy Producers 1984, Energy Information Administration, U.S. Department of Energy.

Table II provides a breakout on the number of stations owned and operated by the top 25 energy companies.

TABLE II

Number of Stations Owned and Operated
by Top 25 Energy Companies 1977-1984

	<u>1977</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Total Retail Outlets	178,921	102,819	99,401	95,601
Company Operated Outlets	10,400	8,211	8,507	7,801

Source: Performance Profiles of Major Energy Producers 1984, Energy Information Administration, U.S. Department of Energy.

FIGURE 1

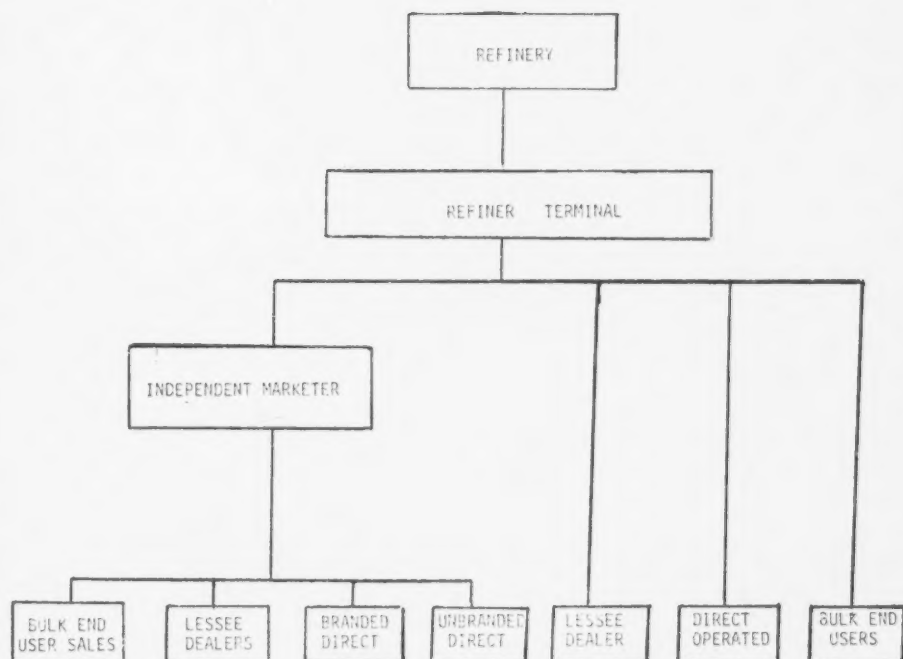


Figure 1 provides a simplistic diagram of the petroleum product distribution system. One, however, can note several facts from this diagram.

First, a motorist or other motor fuel purchaser has a myriad of ways of purchasing product. He or she can buy it from a branded refiner direct operated station; a branded dealer supplied directly by a refiner; a branded dealer supplied by an independent marketer; a branded marketer direct operated station; or a private brand marketer direct operated station. To further

complicate a motorist's decision, there are usually various ancillary services offered along with the fuel ranging from groceries, fast foods, car washes, repair services and many others. The motorist lives in a Baskin-Robbins world where he or she can choose from a number of ways to buy gasoline as well as the other services he or she may desire to accompany that product. His or her choices are no longer limited to chocolate or vanilla.

Second, the situation presented in the diagram actually exists in many markets. The refiner is both the supplier of the independent marketer and the franchised dealer as well as their competitor. These "dual distribution" markets where a manufacturer also competes with its distributors and retailers are rare in most industries, but are commonplace in petroleum marketing.

Finally, the diagram shows that motor fuel, regardless of how it is distributed, eventually reaches the consumer. It is not hoarded anywhere in the system, nor is it used for any other purpose than to fuel motor vehicles. It is also too valuable a commodity to lose or to waste through lax inventory controls. The question, therefore, becomes: Which distribution system gets the product to the consumer at the lowest price? Or phrased another way: Which marketer can perform the function of moving the product from the terminal to the motorist at the lowest cost?

THE BEST DISTRIBUTION SYSTEM

Since many refiners utilize different distribution systems, there is obviously much disagreement as to which is the best distribution system. The phrase "best distribution system" may even be inappropriate in that there is no system that could be called "the best" in every market or in every situation. In addition to identifying "the best" one must first identify the purposes the refiner wants to achieve from its distribution system.

Does the refiner simply want to distribute product in the cheapest, most efficient means possible? Does it want to be able to penetrate new markets with its trademark? Does it want to control its retail marketshare in a comfortable fashion so as to assist its refineries in knowing how much of which products to produce?

If the goal were simply to get product from the terminal to the motorist at the lowest possible price, then a convincing case could be made for the independent marketer as the best system for distributing petroleum products.

The independent marketer, as a small businessman, is much closer to his particular market. He knows his customers better and their demand patterns. He has lower overhead costs and can respond more rapidly to changing market conditions. He is also more likely to innovate, to try to diversify so as to demand less total income from motor fuel. He is constantly searching for ways to increase the efficiency of his operation to shave an extra fraction of a cent per gallon off of his cost of doing business. It is no secret that many of the innovations in today's market such as self service, gas and go, convenience store tie ins, and card-lock key lock operations were all originated by independent marketers.

This inherent efficiency of independent marketers was even recognized in the DOE Draft Report on Deregulated Gasoline Marketing issued in March, 1984. According to the report:

"The jobber management usually is located right in the marketing area. The refiner's management more typically is layered. While local offices may exist, managerial decisions often are made in some remote city several layers up the management structure. Decision making time is lengthened and local familiarity may be lost as managers become removed from the local environment." (Page 43)

Recent DOE statistics also support the claim of superior marketing efficiency by independent marketers. The Performance Profile of Major Energy Producers issued by the Energy Information Administration earlier this year showed that the top four companies (Texaco, Mobil, Chevron and Exxon) as measured by total energy assets had the highest marketing costs of any companies in 1984 and that they actually lost money in marketing that year. Collectively, these companies distribute less than half their product through independent marketers.

The "all other" group of refiners ranked in terms of total energy assets, however, had marketing cost of \$1.13 per barrel less than the top four companies. These bottom companies also made money in marketing in 1984. Interestingly, in aggregate, these companies sell 63 percent of their product through independent marketers.

Admittedly, it is difficult to draw precise conclusions from this data. The companies are grouped in the aggregate, so it is difficult to pull out those companies that operate predominantly through marketers and compare them with those companies that do not.

In this exercise one also cannot make reliable comparisons on publicly available data from the companies themselves. Where information on downstream operations is broken out at all, it is expressed in terms of refining and marketing, not strictly marketing.

This frustration with not being able to clearly compare marketing profitability of various companies was discovered by MPACT Securities, a firm of investment managers and advisors..

MPACT was commissioned by a member association of PMAA, the Texas Oil Marketers Association, to analyze downstream profitability of major integrated companies. MPACT had hoped to study refining and marketing profitability separately, but found "there is not sufficient public information available to analyze those divisions separately." After analyzing refining and marketing as a single unit, the study concluded:

"...We are convinced that the major oil companies' involvement in downstream operations, as they have been conducted in recent years, has not yielded identifiable benefits to shareholders in those companies. First, industry trends in R/M (refining and marketing) activities have demonstrated characteristics that investors generally view with disfavor -- low returns on investment, negative income growth, a relatively volatile stream of earnings. And second, there is an inverse statistical relationship between oil companies' exposure to downstream operations and the valuation of their stocks."

PMAA, in explaining why independent marketers as a class are the most efficient operators in the petroleum marketplace, obviously does not intend to imply that every marketer is efficient. Many marketers who were not efficient have already gone out of business in the nearly five years that have passed since crude oil and gasoline were decontrolled. In fact, marketer ranks have dwindled by nearly one-third since 1980. The marketers who have survived, however, are generally stronger and more efficient than ever. PMAA's objective is to insure that a competitive marketing environment exists which will allow these efficient, independent marketers to continue to supply low priced motor fuel to the American consumer.

If independent marketers are so efficient then why do some companies not use these distributors to a greater extent than they now do? As mentioned earlier, there are other factors in a company's decision to market product other than through independent marketers.

Most of these other reasons relate, however, to one single factor -- the company's ability to better control the sale of their product in a particular market. This desire to control product distribution was also discussed in the above referenced DOE Report on Deregulated Gasoline Marketing:

"A refiner attempts to maintain an efficient level of refining capacity over time. One way the refiner does this is by ensuring that product demand will remain at a minimum efficient level over time. If the refiner determines that distribution through an indirect channel provides too much uncertainty to its refinery operations, then this factor may override other economic considerations. Since the direct channel of distribution is more secure, it may be chosen as the best distribution strategy not because it provides the best economics from a purely downstream distribution viewpoint, but because it maximizes overall economics of the integrated structure. Thus, as the refinery operation increases, there are greater incentives to use a direct channel of distribution because the refiners can maintain greater control over that channel..." (emphasis added).

The phrase "direct channel" refers to refiner distribution through direct operated outlets and through franchised dealers. The "indirect channel" refers to distribution through independent marketers.

As one can obviously see from this analysis, marketing efficiency may not be the most important factor in a refiner's decision to sell motor fuel. Marketshare control and thus upstream control of refinery operations appears to play a greater role.

GASOLINE MARKETING SINCE DECONTROL

Basically there have been three phases of motor fuel marketing during the past two decades. Phase I can best be described as the pre-government control era. During this phase, marketing was viewed by most major companies as a means of getting rid of the crude oil production where the real money in the company was being made. Stations were being built on every corner and the philosophy seemed to be the more stations, the more volume sold, the more crude oil produced and the more profits made. During this era, branded independent marketers generally were aligned with a single supplier. The marketer was intensely loyal to that supplier and would never consider buying product from

more than one source. Private brand marketers operated extensively and provided an important source of competition to major brand stations.

During this era, the wholesale market was clear cut both from the standpoint of the marketer and the supplier. If a price war ensued in a given market, a marketer was generally offered allowances by his supplier to maintain his competitive posture in the market.

Phase II began after the Arab oil embargo when the federal government imposed price and allocation regulations on the entire industry. The rules of the game changed completely. In fact, the rules were being written in Washington, D.C. New companies at every level of the industry entered the market. Many of these companies were clearly creatures of the regulations.

Supplier-marketer relations were severely strained as Washington became the arbitrator of all disputes. In addition to the price and allocation regulations, the government changed the nature of the petroleum industry in another way. The imposition of the Windfall Profits Tax and the erosion of the oil depletion allowance turned the industry upside down. Now much of crude oil production was being taxed at a rate of 70 percent. It takes no genius to realize that it would be more profitable for a company to divert a greater level of profits to downstream refining and marketing operations where the maximum rate of taxation was 46 percent.

This led to a re-evaluation of the companies' refining and marketing operations and the steps needed to make those operations more profitable. There was also a quick realization that there were too many stations doing too little volume. Self-service operations grew dramatically as companies tried to copy independent marketers in their efforts to increase the volume per station.

Many changes desired by the companies, however, were impossible to make. They were prohibited by the federal regulations. These changes included withdrawals from certain markets; recovery of the cost of credit card operations; and more realistic allocation of product among its customers.

Independent marketers quickly learned the rules of the game during this era. They hired their own lawyers to obtain additional supply. If their supplier was unable to provide them the additional product they needed, they sought product from other suppliers that had excess product. They also began to operate through fewer and fewer stations, selling higher volumes.

Phase III began in 1981 when President Reagan announced his decision to decontrol gasoline and crude oil. Suddenly the refining companies were free to make whatever moves they desired. Numerous market withdrawals occurred. Competition became more intense than ever and marketers who were unable to adjust to this changed environment either sold out or simply went out of business altogether.

The suppliers were also looking to build marketshare in key markets through their direct distribution systems (direct operations or franchised dealers). The desire by suppliers to keep independent marketers competitive in these markets no longer existed. To the contrary, many companies "encouraged" their marketers to get out of the attractive urban/suburban markets.

These actions were occurring in a market environment where both the price and demand for motor fuel was steadily declining. Gasoline demand peaked in 1978 at 7.4 million barrels per day and declined steadily over the next several years. By the end of 1983, consumer demand was down by 10.7 percent. Demand increased slightly in 1984, but most projections see static demand patterns over the next several years. According to EIA, prices by the end of 1984 were 11.5 percent less than they were in early 1981. Most recently, as a result of the price declines in crude oil, gasoline prices have fallen by nearly 26 cents per gallon since the beginning of 1986 according to surveys conducted by the Lundberg Letter.

As previously indicated, many marketers were unprepared for the changes which occurred after decontrol and thus were unable to weather the tidal wave of changes. Marketers who survived this transition recognized that this two-edged sword of declining demand and declining prices dictated significant changes in the way they operated their businesses. First, most marketers recognized that more than ever they must diversify their operations and create alternative profit centers such as convenience stores (C-store), car washes and quick lube centers.

Second, marketers recognized that they must maximize their efficiency by reducing their costs per gallon of operation. According to a study just completed by PMAA, marketers are selling product through fewer outlets, with fewer employees, service vehicles and bulk storage plants. The use of computers by marketers has jumped dramatically as well as the use of automated fueling systems. In addition, marketers have tightened credit terms to their customers - although marketer credit terms to their customers are still more lenient than the credit terms marketers receive from their suppliers.

The third and perhaps most significant change marketers had to make in their businesses was to recognize that their supplier was no longer inclined to price its product in a manner that would keep the marketer competitive at the retail level. Many suppliers adopted the philosophy that they would keep wholesale terminal prices competitive with comparable wholesale terminal prices; prices to dealers would be comparable to other suppliers' prices to their dealers; and retail prices would be comparable to other retail prices.

While this philosophy may have made sense in a stable market environment, it made no sense in a market environment where the lowest retail price was often less than not only the price charged to dealers, but also less than the wholesale terminal price. In some cases it might even be lower than the posted price for crude oil.

Independent marketers thus became more price sensitive than ever before. If their traditional supplier could not offer them a price which allowed them to be competitive at the retail level, they looked for another supplier that could. In some cases marketers debranded their retail outlets so as not to violate their franchise agreements when they purchased product from someone other than their branded supplier.

There were two factors other than price which also dictated independent marketers to seek out additional suppliers. The first related to market withdrawals by major companies as well as the mergers that were occurring within the industry. A marketer with a single source of supply may be left in

a precarious position if his supplier decides it no longer wants to operate in a given market. A marketer is also in a precarious position if his supplier merges with another major company and the new company "divests" part of its market assets to a third party. When Texaco sold Getty's Northeastern assets to Powertest, former Getty marketers were alarmed. They had previously been supplied by a major integrated company; now they were to be supplied by another, albeit larger, independent marketer. The same concern is being expressed in the Northeast today as a result of Chevron's decision to sell its marketing assets in that market to a large convenience store chain, Cumberland Farms. Interestingly, over 80 percent of the outlets affected by that transaction are owned by marketers.

The other non-price factor relating to marketers' decisions to seek other suppliers was the "no-growth in this market" philosophy adopted by some suppliers. These suppliers having identified markets they wished to control through their franchised dealers and their direct operated units were not interested in giving independent marketers additional volumes to grow in those markets. Thus, growth for a marketer would have to come from volumes bought from another supplier and sold through separate outlets in that market.

These price and non-price factors led marketers to seek out new sources of supply. In a survey conducted in the spring of 1985, PMAA found that the average marketer bought product from four different suppliers. And, since these marketers were obviously not captive customers of their suppliers, it made it difficult if not impossible for a supplier to "control" retail marketshare through independent marketers.

One cautionary note should be added. Many of the observations made in this statement are industry generic in nature. It would tend to lead one to believe that all companies behaved the same way and treated their independent marketers in the same fashion. That is definitely not the case.

Some suppliers have staked the success of virtually their entire marketing operations on independent marketers. Others have carefully delineated markets which will be supplied exclusively by independent marketers. These companies have been successful in these endeavors because they make every effort to supply the independent marketer with product and services at a price and on terms and conditions which allow them to be competitive in that particular market.

That is not to say that problems do not sometimes exist with these suppliers. But, generally these problems are worked out between the marketer and supplier with the supplier recognizing the degree to which it is responsible for the situation that exists.

With this information as a background one can draw several conclusions. First, the petroleum marketing industry has changed dramatically in recent years. Second, because major refiners are both the suppliers and the competitors of independent marketers and dealers, these marketers and dealers have often been the victims of strategies implemented by the refiners to increase controlled marketshare. A third conclusion is that marketshare control is the most critical concern of refiners in trying to determine the best distribution strategy.

It is now appropriate to examine how HR 3824 would affect gasoline marketing and whether it is the appropriate remedy to the problems which exist.

HR 3824: THE MOTOR FUELS SALES COMPETITION IMPROVEMENT ACT

As introduced, HR 3824 does three basic things. First, it makes it unlawful for a producer or refiner to require any retail motor fuel dealer to purchase more than 70 percent of the monthly retail sales of motor fuels from such a producer or refiner or to prohibit the use or conversion of storage tanks and dispensers.

Second, the bill prohibits large integrated refiners from operating any motor fuel service station in the United States. Large integrated refiners are those that produce 30 percent or more of their own crude oil and which have a total refinery capacity in excess of 50,000 barrels per day. PMAA estimates there are 22 companies which qualify under this definition.

Third, the bill authorizes financial assistance to small business concerns acquiring motor fuel stations by allowing SBA to make loans to any dealer acquiring a motor fuel service station.

While PMAA understands much of the motivation behind this legislation, and in some cases can concur with that motivation, we can not support HR 3824. PMAA will address first the major issue of this legislation which is retail marketing divorcement.

Retail divorcement is certainly not a new idea having been the source of numerous legislative hearings at both the state and federal level in recent years. There have been many times when PMAA has given strong consideration to divorcement as a means of addressing marketplace abuses but each time we have rejected the idea as an inappropriate remedy for the problem that exists.

Our continued opposition hinges on three major factors. The first factor is the strong philosophical belief by marketers that they can compete with anyone so long as each of the competitors begins at the same starting point. Therefore, trying to create a "level playing field" is more important to PMAA than excluding any competitor from the market. By excluding any competitor one limits competition and denies the consumer many of the marketing innovations that competitor may provide.

Only in circumstances where "a level playing field" can not be attained and where the problem of refiner direct operated stations was pervasive would PMAA consider divorcement as a remedy to the problems being faced in gasoline marketing. This brings us to our second objection to divorcement. On a national level the volumes sold by refiners through stations they own and operate has stabilized at approximately 13.1 percent for the past three years. The number of stations owned and operated by refiners has actually declined over the same period of time. Therefore, PMAA does not see the problem of refiner direct operated stations as being a national problem necessitating federal divorcement.

It is interesting to note, however, that in some states the marketshare of refiner owned and operated stations is considerably higher than it is nationally. In those states divorcement may be an appropriate remedy and in fact many marketers from such states have endorsed divorcement proposals.

Therefore, it would seem to be more logical to allow the different states to consider divorcement where refiner direct outlets present a specific problem rather than mandating federal divorcement.

Finally, PMAA's third reason for opposing divorcement relates to the relative position of those independent marketers in states which now have divorcement. The problems reported to PMAA from marketers in the states of Maryland and Connecticut, where the strongest divorcement bills now exist, are very similar to the problems reported by marketers in other states. These problems generally relate to the efforts by refiners to control marketshare through their direct retail dealer network through price and allocation practices that discriminate against independent marketers.

The second major area that HR 3824 addresses is the ability of dealers to purchase product from any source so long as they debrand the pumps. The dealer interest in this proposal is understandable and is similar to the desire of independent marketers to diversify their sources of supply in recent years. There are, however, several differences between marketers and dealers.

Marketers own their own locations, their own pumps and their own tanks. Therefore, they can make their own determination as to what refiner trademark, if any, under which they wish to market gasoline. Most dealers lease their stations from a refiner or a marketer. In leasing that station to the dealer the refiner or marketer expects a certain return both in terms of the value of the property and the volume to be sold through that station. If the refiner or marketer is unable to rely on that station to provide both the rental return and product volume return then it may be uneconomical to continue to lease the station.

A second difference between refiners and marketers relates to the fact that although marketers may buy product from many different suppliers they are careful not to commingle different suppliers' product. For example, a marketer with a franchise agreement with Refiner A would only sell Refiner A's gasoline at a Refiner A station. The same would be true if he also purchased product under a franchise agreement with Refiner B. The marketer may also have unbranded stations. At these stations, the product may be purchased from any supplier.

The dealer on the other hand usually has one station operating under a single trademark. Motorists who stop at that station generally expect to purchase the gasoline which is promoted on the signs outside the station. It is deceptive for the motorist to learn only after entering the station that he or she is not buying gasoline refined by Refiner A but is instead buying an unnamed gasoline. In such an instance would the motorist be allowed to use the credit card of the trademark supplier? Would the supplier be required to accept credit card receipts for gasoline that was not its own? If the product purchased in such an arrangement was tainted or failed to meet the standards set by the trademarked supplier, would that supplier be liable for legal suits by an enraged motorist? These and other questions should be addressed before further consideration is given to this proposal.

One of the hotly debated issues in petroleum marketing is the fungibility of gasoline. It is true that even though your franchise is with Refiner A, you may be supplied through an exchange agreement by Refiner B. However, if Refiner A authorizes you to purchase product from Refiner B it is an fact

certifying the Refiner B's product meets its standards. It has no way of doing a similar certification for product purchased by a dealer from another source.

ALTERNATIVE APPROACHES:

The major concern of marketers and dealers alike is to acquire adequate supply at competitive prices. Dealers should have no reason to want to purchase product from another source if their trademark supplier consistently offered them a competitive price.

With this in mind, PMAA and the Service Station Dealers of America (SSDA) have jointly endorsed HR 2046, amendments to the Petroleum Marketing Practices Act of 1975 (PMPA). In its final form the current PMPA law is essentially franchise protection legislation. It is designed to prevent franchisors (refiners and distributors) from arbitrarily terminating or nonrenewing the franchise relationship with franchisees (distributors and dealers).

The term "franchise" is defined in terms of a motor fuel trademark license owned or controlled by a refiner. Leases or real property and motor fuel supply agreements are also incorporated in the definition of a franchise.

The act spells out conditions under which termination or nonrenewal are permissible and the steps which a franchisor must take either to effect a termination or a decision to nonrenew the franchise relationship (i.e. cause, notification, etc.). In instances where a franchisee feels that a franchisor has failed to comply with the Act, he may bring a civil action against the franchisor. The courts are authorized to grant equitable relief necessary to remedy the violation. A preliminary injunction is to be granted if the franchisee can demonstrate the existence of sufficiently serious questions, going to the merits, to make them a fair grounds for litigation; and the court determines that balancing of the hardship indicates that the hardship suffered by the franchisee if the injunction were not granted would be greater than the hardship imposed on the franchisor by issuance of such relief.

Regarding terminations and nonrenewals, the PMPA also contains preemption of state law unless the law is "the same as" the applicable provisions of the federal statute.

Essentially the law provides only minimum standards governing the termination of franchise relationships and as such concerns itself primarily with procedural safeguards. Therefore, in its current form the law is inadequate protection to either marketers or dealers. However, HR 2406 as introduced by Representatives Mike Synar (D-OK) and Tom Lauke (R-IA), does provide significant safeguards for marketers. In brief, the proposed legislation does several things:

- It prohibits franchisors from terminating franchisees for failure to purchase minimum gallons unless the franchisor can show it offered those volumes at a competitive price;
- It prohibits franchisors from discriminating in price and allocation policies between its classes for franchisees;

- It provides that in the event of market withdrawal, refiner franchisors must offer franchisees the right of first refusal to purchase the leased marketing premises;
- It requires that changes made in the franchise agreement at the time of renewal be fair and reasonable;
- It prohibits station conversions during the term of the franchise agreement;
- It allows franchisees to continue operating the leased marketing premises in cases where the underlying lease had expired and where the franchisee had been able to negotiate his own agreement with the owner of the property;
- It prohibits franchisors from engaging in anticompetitive pricing practices in instances where they are in competition with their franchisees;
- It allows the courts to approve payment of attorney's fees to the franchisee if it wins final equitable relief, even though actual damages may not be awarded; and
- It allows for the sale or transfer of a franchise agreement and allows for the succession of a franchisee under a plan to be approved by the franchisor.

We believe this legislation would address most of the problems being experienced in the motor fuel marketplace and we urge its adoption in lieu of HR 3824.

SUMMARY

In summary, Mr. Chairman, we commend you and members of the Subcommittee for your continued interest in motor fuel marketing. We, however, do not believe HR 3824 is the appropriate solution and we urge no further consideration of that proposal.

Thank you for your consideration and I will be glad to answer any questions you may have.

Mr. MAVROULES. Thank you very much for your testimony. Now to clean up on this panel, Mr. Roberts.

TESTIMONY OF F.C. ROBERTS, JR., VICE PRESIDENT, ON BEHALF OF THE SOCIETY FOR INDEPENDENT GASOLINE MARKETERS OF AMERICA AND THE NATIONAL ASSOCIATION OF CONVENIENCE STORES

Mr. ROBERTS. Thank you, Mr. Chairman. I appreciate you being patient and I will try to be brief.

I would like to say that I would ditto everything that Mr. Chisholm has said not because of the fact that he was raised in North Carolina and that I am from North Carolina and market gasoline in North and South Carolina, but for the basic principles that he has put forward.

I do operate my own business. I own 100 percent of the stock along with the banks that finance my operation. I do every day get up and look for the venture capital portion of my business. I make decisions based on what I consider good bottom line reasons, and my purpose for being here is that not only do I belong to the Society of Independent Gasoline Marketers and am vice president of that group, but I belong to the National Association of Convenience Stores group and also belong to Mr. Chisholm's group. Those trade associations represent what I consider an area of responsibility that I as a businessman must be involved in to protect and to propagate what my father started some 51 years ago of going in business to make a profit.

I am privileged to live in a country such as we live in here and I am privileged to come and talk to you as an organization called Congress to do this.

SIGMA itself represents 316 members. We market some 15 to 20 percent of the gasoline in the United States. We are represented in 50 States. We have some 16,000 retail outlets.

The National Association of Convenience Stores is a little larger organization. It has 1,200 members and they represent some 46,000 convenience stores and operate some 15, 20 to 25 percent of the gasoline marketed in this country. Obviously, there is an interplay between SIGMA and NACS. It's kind of hard to ascertain how much of that gasoline would be of the total in the United States.

All of these members are independent entrepreneurial individuals that went in business to make a profit. They chose a course of action; that was to try to find a notch in the marketplace that was cost effective, not to have Congress put a blanket around it.

We purchase from the same refiners that you heard testify in earlier testimony. We compete daily with the same refiners and we outrun them because we get up earlier and we go to bed later at night. We work harder at it. That's why we are in business, and that's why we're growing in this industry.

The retail market itself is darned competitive and I can testify to that from yesterday when I left Charlotte, NC, the street prices were anywhere from 69 cents, I mean 65 cents up to 75 to 80 cents on the street, including the taxes.

Now the customer is who we are talking about here, and that's what I have over the doors of all my convenience stores as you

walk out the door—the customer is king—and this is where we really need to talk about what is it going to do to the ultimate consumer?

In our opinion, the free market is alive and breathing. To hear some of the previous testimony, it is not alive and breathing. Gentlemen, in North and South Carolina it is darned well alive and breathing, and I don't have any problem with what is going on in the marketplace.

Obviously, as Phil said, we have some inequities. We have lost some fellow jobbers. We have lost some fellow service station dealers, but most of those have been due to the inability to flex with the marketplace. Marketing is just like the tide. It looks like nothing is happening when you stand on the coast, but that tide goes up and down twice a day.

I'm sorry that some people will be eliminated, but there's nothing we can do about it. H.R. 3824 certainly doesn't address that. The divorcement portion Phil aptly commented on. I did want to note two things.

One was that Arco through their lessee dealers in 1983, 1984, did a tremendous job of increasing their market share without cancellation of a lot of their dealer organizations. They did it simply by lowering their prices, and they got the business.

The refiners destruction of dealers just doesn't make a whole lot of sense to me as a massive plan. They are going to lose business. They have got ROI. They have got laws to deal with. I have attached a copy of the PMPA laws. I don't believe any of you received them per se, but they are part of my testimony and I would challenge you to read that and see that the law does take care of how you eliminate a dealer. It's pretty well covered.

We oppose divorcement as a basic concept. The open supply portion of the bill kind of infuriates me because, quite frankly, I built my retail outlets, some of which are dealer operated, and I put pumps and tanks in and for someone to tell me that they are going to buy 30 percent of their supply from someone else in my pumps and tanks and my investment really doesn't make a lot of sense. I cut my game plan based on my return on investment, a portion of that coming from gasoline, a portion coming from rent.

The trademark thing is a real, real snake. I don't know how you're going to deal with that. In a logical sense the idea that we are going to keep the rent the same and you are going to take 30 percent of the sales away doesn't make any sense to me, either, and in North Carolina we've got horrendous laws about commingling. I don't know how they are going to deal with that. That's really a big problem, and every State, I think, has laws. It's up to a \$10,000 fine in North Carolina if you are caught commingling, which I hope I never am, and that's something my father taught me a long time ago. If you're going to fly the flag, fly the flag, and if you don't, take it down with ring nuts and put the private brand up.

We happen to represent Shell, Union, and we have our own private brand, World. The last five retail outlets, which have cost over a half a million dollars apiece, we have flown the flag at our choice. We didn't choose to go with the private brands.

I just don't understand how the credit card portion of this bill will be—if you are going to sell a portion of your business in the private area, you can't tell me that somebody is not going to try to put those sales on credit cards. I don't understand how the refiners are going to police that. I certainly wouldn't allow somebody to put a sale on a credit card out here and it not be my product. That wouldn't work with me. That's not fair. I don't know what the discipline is going to be settled on that.

In conclusion, I want to note three things basically—the divorce-ment portion, the open supply portion, the basic decision of somebody else deciding what the return on investment would be to me are all not what this country was founded on.

Thank you for allowing me to come, and I will be glad to answer any questions.

[Mr. Roberts' prepared statement, with attachments, follows:]

PREPARED STATEMENT OF F.C. ROBERTS, JR., VICE PRESIDENT, ON BEHALF OF THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA AND THE NATIONAL ASSOCIATION OF CONVENIENCE STORES

My name is Tally Roberts, I am in business for myself and as Chairman of the Board of Acme Retail, Inc. in Gastonia, North Carolina, direct our company's gasoline marketing operations under the Union and Shell brands as well as our private brand, World. Our long-term relationships with major oil companies, we have been doing business with Shell for 35 years, as well as private-brand marketing, have given me a fairly broad perspective on gasoline marketing. So, I appear today on behalf of myself as well as the Society of Independent Gasoline Marketers of America ("SIGMA") of which I am a Vice President and the National Association of Convenience Stores ("NACS") to which my company also belongs.

SIGMA is a national trade association of 316 chain retailers and independent marketers of motor fuels. SIGMA members market refined petroleum product in all 50 states through over 16,500 retail outlets. SIGMA members' sales constitute between 15 and 20 percent of the retail market for gasoline in the United States.

NACS is a national trade association with approximately 1,200 members which operate 46,000 convenience stores. Over 50 percent of NACS members' outlets include gasoline pumps in connection with their convenience store operations. NACS sales of gasoline constitute between 20 and 24 percent of the domestic retail market. NACS and SIGMA have some members in common.

Independent marketers and chain retailers such as SIGMA's and NACS' members historically have been recognized as the most innovative and cost-effective segment of the retail gasoline market. By pioneering such cost-effective marketing techniques as self-service, automatic dispensing units, and the high volume/low margin style of retailing, such companies have generated substantial cost savings and thereby minimized the amount of fixed costs which must be recovered in the selling price of each unit of motor fuel. As a result of these innovations and their superior operating controls, our members are able to offer motor fuels to American consumers at the lowest possible cost and, historically, have been viewed as being the most price-competitive segment of the domestic, retail motor fuels market.

Independent marketers and chain retailers, such as myself, purchase from and compete with refiners. Thus, our position vis-a-vis our refiner-suppliers is no different from that of the dealers which support divorcement. However, we are convinced that our marketing efficiencies are sufficient to permit us to survive in competition with refiner-suppliers which historically have been unable to operate at retail as efficiently as independent marketers.

The retail market for motor fuels is intensely competitive and constantly evolving. Market conditions clearly indicate that not all retailers of gasoline will be able to make the adjustments necessary to survive. These marketers will leave the market and will be replaced by new participants, more responsive to the consumer. Branded dealers are not the only retailers which will leave the market. Chain retailers, jobbers, and some refiners also have been forced from the market. SIGMA and NACS accept this fact as reflective of the economic reality that refining and distribution systems were over developed to respond to levels of demand which no longer exist.

We have consistently opposed the Federal Government's intervention in the motor fuels market during periods of adequate supply. This opposition reflects our

concern that such intervention normally operates to our members' disadvantage by altering the conditions most relevant to independent marketers' and chain retailers' operations. Specifically, SIGMA and NACS oppose government activity which provides particular classes of participants in the retail market with an advantage relating to price, supply, or market entry over their competitors. Thus, SIGMA and NACS oppose the enactment of H.R. 3824.

Retail Marketing Divorcement

We object to the provisions of this bill which would prohibit certain refiners from participating in the retail market for motor fuels (the divorcement provisions). Divorcement represents a radical form of government intervention in the marketplace. Essentially, such action would constitute a legislative apportionment of market shares. Such governmental interference in the operation of market mechanisms could only be justified by the most substantial and convincing evidence of predatory activity. In SIGMA's and NACS' views no such evidence exists. Thus, we adamantly oppose retail marketing divorcement in the motor fuels industry.

At the heart of the attack against refiners' participation in the retail market is the assertion that these companies are "subsidizing" their retail operations with profits derived from other activities, such as crude oil production or refining. Those making this allegation assert that refiners act in this manner with the intention of controlling the retail market for motor fuels.

To the best of our knowledge no credible proof of refiners' subsidizing their retail operations has been developed. In 1981, the Department of Energy undertook a study under Title III of the Petroleum Marketing Practices Act entitled "The State of Competition in Gasoline Marketing" Book I (1981) ("the study"). The study specifically rejected this thesis and concluded that no governmental action was necessary to ensure a functioning competitive gasoline market. Since publication of the study, SIGMA knows

of no evidence which would alter the study's conclusion. Further, the fear that refiner-operated outlets could monopolize the market is unfounded because entry into the retail gasoline market has never been considered difficult in the context of adequate supply. ^{1/}

A refiner has no reason to force its lessee-dealers out of business. The refiner has made a significant investment in the site and equipment which are leased to the dealer. Destroying the dealer's business would destroy the refiner's investment. The property and equipment value as a retail gasoline outlet would be reduced if the refiner-
lessor induces its failure.

Divorcement's supporters, primarily major branded lessee-dealers, allege that such action is necessary to preserve them as a class of competitors in the retail market for motor fuels. They allege that the companies which this legislation would bar from operating retail outlets are the source of their problems in the retail market. In essence, proponents of divorcement allege that the supplier's opportunity to compete with its customers is so inherently unfair as to justify the exclusion of certain competitors from the market. SIGMA and NACS disagree.

A refiner-supplier's power over the lessee-dealer is limited by the Petroleum Marketing Practices Act ("PMPA"). The PMPA protects branded lessee-dealers from arbitrary termination or non-renewal of their marketing agreements by prohibiting such action except in accordance with strict statutory criteria and procedures. (I have attached a copy of the relevant portions of the PMPA for your convenience.) Thus, even if the refiner had reason to want to operate its own outlets or if it needed to operate its own outlets to increase its market share, its ability to terminate its arrangements with lessee-dealers is limited by the PMPA.

^{1/} See Geographic Market Definitions Under the DOJ Guidelines, by David T. Scheffman and Pablo T. Spiller, Working Paper No. 129, published by the Bureau of Economics of the Federal Trade Commission (August 1985).

Finally, and most importantly, a refiner does not need to operate outlets in order to capture an increased share of the retail market. The Atlantic Richfield Company proved that it could capture a large percentage of the retail market in California and the mid-Atlantic states through its lessee-dealers. Arco achieved this result by simply instituting an aggressive discount program for its dealers. Arco did not destroy its investment in leased retail outlets by competing directly with them. Rather, it achieved its goal of attaining increased market share more efficiently through its lessee-dealers. Thus, if the goal of divorcement is to limit refiners' ability to dominate the retail market, then divorcement does not work.

H.R. 3824's divorcement provisions reflect an attempt by one group of competitors to insulate themselves from the realities of competition. History has demonstrated that divorcement's supporters will seek to use legislation to bar competition from not just integrated refiner but others as well. After all, if one can justify legislation which limits the right of an integrated refiner to participate in the retail market, why not ultimately limit the right of a chain retailer to participate in the retail market? This bill's divorcement provisions constitute only the first step in a campaign to limit competition at the retail level of the motor fuels market and should be rejected. The bill's enactment would constitute a terrible precedent.

In summary, we urge this Subcommittee to reject legislation which limits any entity's participation in the retail market for motor fuels. Such legislation would represent a radical form of governmental intervention in a marketplace which operates under current conditions in a fairly free and competitive manner. Moreover such legislation would establish a dangerous anticompetitive and anticonsumer precedent for future action aimed at other participants in the retail market, such as jobbers and chain retailers who compete with dealers. Reducing competition at this time will discourage

innovation, such as that upon which SIGMA and NACS members have built their businesses, and will ultimately harm consumers.

Open Supply

We also oppose the so-called "open supply" provisions of H.R. 3824. These provisions would prohibit a producer or refiner from requiring, directly or indirectly, any retail motor fuel dealer to purchase more than 70 percent of its monthly retail sales of motor fuel from such producer or refiner and would allow the retail dealer to sell branded and unbranded products at the same outlet. Enactment of these provisions would: (1) provide branded lessee-dealers with an unfair competitive advantage; (2) generate consumer confusion; (3) require branded lessor-suppliers to either increase the rents for their outlets or experience a decreased return on their investment; (4) raise significant problems for branded suppliers' offering credit cards; (5) threaten branded suppliers with a diminution in the value of the brand name which they have developed and in which they have invested; and (6) impose an unnecessary and inequitable enforcement burden on branded suppliers.

Enactment of the "open supply" provisions would require lessor-suppliers to either increase their rental charges or experience a decline in their return on their investments in their retail outlets. Generally, suppliers own all the assets, including the real estate, of the retail outlet. A supplier's investment in a retail outlet reflects the outlet's value as an assured market for certain volumes of gasoline which that supplier either produces or is committed to purchase. This legislation now would alter the basis upon which these investment decisions were made by arbitrarily allowing the dealer to sell the products of others at that outlet and thereby reducing its value as an assured market for the lessor-supplier.

Depriving the supplier of the benefits of its bargain and its investment will ultimately hurt the dealer this legislation is intended to help. Under exclusive supply

agreements, dealers often pay below-market rent because the supplier benefits from the assured outlet for its supply of gasoline. If a lessor loses its right to supply 30 percent of that outlet's volume, it will simply raise the rent to compensate for this revenue reduction. Dealers are already very sensitive to rent increases. Yet, the probable result of the open supply provisions' enactment would be higher rents for dealers.

Permitting a branded dealer to obtain and sell 30 percent of its volume from an unbranded source will raise significant problems under the trademark and brand integrity laws of some jurisdictions. For example, in my state of North Carolina, we have strict anti-commingling laws which "open supply" would unavoidably violate. Moreover, a probable effect of these provisions would be the elimination of the major companies' credit card programs.

Suppliers, justifiably, are not going to tolerate the use of their cards for sales of someone else's product. But there is virtually no way to police this program to make sure that the card will not be used to pay for some or all of the proposed 30 percent. The result will be the companies' withdrawal of their credit programs. The big losers under such circumstances will be branded jobbers and dealers and consumers.

Enactment of the "open supply" provisions also would allow the dealer to appropriate a portion of the value of a supplier's brand name because other products would receive the benefits of the supplier's investment in that brand name. Specifically, a brand name draws some customers to an outlet. But for the brand name displayed, the customer might never have patronized the outlet. Thus, the unbranded product is receiving a benefit for which it did not pay, *i.e.*, the drawing power of a trademark in which the lessor-supplier has invested and of which it would be deprived by these provisions. Suppliers should not have the value of the brand name in which they have invested appropriated in this fashioned.

In addition to subjecting a supplier to the risk of having the value of a brand name in which it has invested appropriated for nonauthorized use, enactment of the bill's open supply provisions also would subject a supplier to the potential loss of that brand name's value. When a motorist patronizes a branded outlet, he expects the quality of product associated with the brand name. When he purchases an unbranded product at a branded outlet, he may attribute to that unbranded product qualities of the branded product. If his expectations are unfulfilled, he may unfairly lose confidence in the branded product to the substantial injury of those who have invested in that branded product's integrity.

An additional risk imposed upon branded suppliers by the bill's open supply provisions would be the potential liability for regulatory violations with respect to motor fuel quality. Specifically, to the extent the branded supplier maintains control over the products sold under its trademark, it can reasonably be held accountable for their chemical characteristics and compliance with regulatory standards. However, if a dealer were permitted to employ a supplier's tanks and equipment to market product supplied by others, subsequent sales from that tank could result in quality defects over which the branded supplier had no control but for which it would, at least initially, be held accountable. The imposition of such a risk on lessor-suppliers is simply unfair.

SIGMA and NACS recognize and appreciate the concern and good intentions of this bill's sponsors. However, the answers put forward in this legislation are the wrong answers. For the foreseeable future, the retail market for motor fuels is going to continue to be a highly-competitive environment. Economic realities, not predatory practices, are the principal factor complicating the lives of participants in that market and will be the primary motivation for such entities to adjust to changing circumstances. Those who tell you the answer to intense competition is its limitation are requesting

special protection. Such protection could be achieved only at an enormous cost to economic efficiency and the consumer. We respectfully urge you to reject that request.

In conclusion, we oppose the enactment of H.R. 3824. Its retail marketing divorcement provisions are unsupported by proof of predatory practices, would not limit the ability of their targets to dominate a market, and would constitute a dangerous precedent for future limitations on competition. The bill's open supply provisions would severely and unfairly limit a supplier's return on its investment in its real estate, equipment, and trademark; create consumer confusion; disrupt branded suppliers' credit programs; and impose unfair risks of enforcement actions on suppliers rendered incapable of assuring the quality of product sold under their brandname.

We appreciate this opportunity to share our views and concerns with you. I will be happy to respond to any questions which my testimony may have raised.

Attachment

(2) The term "franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(3) The term "franchisor" means a refiner or distributor (as the case may be) who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

(6) The term "distributor" means any person, including any affiliate of such person, who—

(A) purchases motor fuel for sale, consignment, or distribution to another; or

(B) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(7) The term "retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(8) The term "marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with sale, consignment, or distribution of motor fuel.

(9) The term "leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(10) The term "contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(11) The term "trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(12) The term "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(13) The term "failure" does not include—

(A) any failure which is only technical or unimportant to the franchise relationship; or

(B) any failure for a cause beyond the reasonable control of the franchisee.

(14) The terms "fail to renew" and "non-renewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship—

(A) at the conclusion of the term, or on the expiration date, stated in the relevant franchise;

(B) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date; or

(C) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978 and has not been renewed after such date.

(15) The term "affiliate" means any person who (other than by means of a franchise) controls, is controlled by, or is under common control with, any other person.

(16) The term "relevant geographic market area" includes a State or a standard metropolitan statistical area as periodically established by the Office of Management and Budget.

(17) The term "termination" includes cancellation.

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(19) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 95-297, title I, § 101, June 19, 1978, 92 Stat. 322.)

SHORT TITLE

Section 1 of Pub. L. 95-297 provided: "That this Act (enacting this chapter and provision set out as a note under section 2822 of this title) may be cited as the 'Petroleum Marketing Practices Act.'"

§ 2802. Franchise relationship

(a) General prohibition against termination or non-renewal

Except as provided in subsection (b) of this section and section 2803 of this title, no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may—

(1) terminate any franchise (entered into or renewed on or after June 19, 1978) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed).

(b) Precondition and grounds for termination or non-renewal

(1) Any franchisor may terminate any franchise (entered into or renewed on or after June 19, 1978) or may fail to renew any franchise relationship, if—

(A) the notification requirements of section 2804 of this title are met; and

(B) such termination is based upon a ground described in paragraph (2) or such nonrenewal is based upon a ground described in paragraph (2) or (3).

(2) For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise relationship:

(A) A failure by the franchisee to comply with any provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, if the franchisor first acquired actual or constructive knowledge of such failure—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(B) A failure by the franchisee to exert good faith efforts to carry out the provisions of the franchise, if—

(i) the franchisee was apprised by the franchisor in writing of such failure and was afforded a reasonable opportunity to exert good faith efforts to carry out such provisions; and

(ii) such failure thereafter continued within the period which began not more than 180 days before the date notification of termination or nonrenewal was given pursuant to section 2804 of this title.

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(D) An agreement, in writing, between the franchisor and the franchisee to terminate the franchise or not to renew the franchise relationship, if—

(i) such agreement is entered into not more than 180 days prior to the date of such termination or, in the case of nonrenewal, not more than 180 days prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(ii) the franchisee is promptly provided with a copy of such agreement, together with the summary statement described in section 2804(d) of this title; and

(iii) within 7 days after the date on which the franchisee is provided a copy of such agreement, the franchisee has not posted by certified mail a written notice to the franchisor repudiating such agreement.

(E) In the case of any franchise entered into prior to June 19, 1978, and in the case of

any franchise entered into or renewed on or after such date (the term of which is 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, if—

(i) such determination—

(I) was made after the date such franchise was entered into or renewed, and

(II) was based upon the occurrence of changes in relevant facts and circumstances after such date;

(ii) the termination or nonrenewal is not for the purpose of converting the premises, which are the subject of the franchise, to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises—

(I) the franchisor, during the 180-day period after notification was given pursuant to section 2804 of this title, either made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises, or, if applicable, offered the franchisee a right of first refusal of at least 45 days duration of an offer, made by another, to purchase such franchisor's interest in such premises; or

(II) in the case of the sale, transfer, or assignment to another person of the franchisor's interest in such premises in connection with the sale, transfer, or assignment to such other person of the franchisor's interest in one or more other marketing premises, if such other person offers, in good faith, a franchise to the franchisee on terms and conditions which are not discriminatory to the franchisee as compared to franchises then currently being offered by such other person or franchisees then in effect and with respect to which such other person is the franchisor.

(3) For purposes of this subsection, the following are grounds for nonrenewal of a franchise relationship:

(A) The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise, if—

(i) such changes or additions are the result of determinations made by the franchisor in good faith and in the normal course of business; and

(ii) such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of preventing the renewal of the franchise relationship.

(B) The receipt of numerous bona fide customer complaints by the franchisor concerning the franchisee's operation of the marketing premises, if—

(i) the franchisee was promptly apprised of the existence and nature of such com-

plaints following receipt of such complaints by the franchisor; and

(ii) if such complaints related to the condition of such premises or to the conduct of any employee of such franchisee, the franchisee did not promptly take action to cure or correct the basis of such complaints.

(C) A failure by the franchisee to operate the marketing premises in a clean, safe, and healthful manner, if the franchisee failed to do so on two or more previous occasions and the franchisor notified the franchisee of such failures.

(D) In the case of any franchise entered into prior to June 19, 1978, (the unexpired term of which, on such date, is 3 years or longer) and, in the case of any franchise entered into or renewed on or after such date (the term of which was 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business, if—

(i) such determination is—

(I) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel;

(II) to materially alter, add to, or replace such premises;

(III) to sell such premises; or

(IV) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee;

(ii) with respect to a determination referred to in subclause (II) or (IV), such determination is not made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises such franchisor, during the 90-day period after notification was given pursuant to section 2804 of this title, either—

(I) made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises; or

(II) if applicable, offered the franchisee a right of first refusal of at least 45-days duration of an offer, made by another, to purchase such franchisor's interest in such premises.

(c) Definition

As used in subsection (b)(2)(C) of this section, the term "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable" includes events such as—

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchisee;

(3) continuing severe physical or mental disability of the franchisee of at least 3 months

duration which renders the franchisee unable to provide for the continued proper operation of the marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

(A) of the duration of the underlying lease; and

(B) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;

(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for—

(A) 7 consecutive days; or

(B) such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, mislabeling or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

(d) Compensation, etc., for franchisee upon condemnation or destruction of marketing premises

In the case of any termination of a franchise (entered into or renewed on or after June 19, 1978), or in the case of any nonrenewal of a franchise relationship (without regard to the date on which such franchise relationship was entered into or renewed)—

(1) if such termination or nonrenewal is based upon an event described in subsection (c)(5) of this section, the franchisor shall fairly apportion between the franchisor and the franchisee compensation, if any, received by the franchisor based upon any loss of business opportunity or good will; and

(2) if such termination or nonrenewal is based upon an event described in subsection (c)(7) of this section and the leased marketing premises are subsequently rebuilt or replaced by the franchisor and operated under a fran-

chise, the franchisor shall, within a reasonable period of time, grant to the franchisee a right of first refusal of the franchise under which such premises are to be operated.

(Pub. L. 95-297, title I, § 102, June 19, 1978, 92 Stat. 324.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2803, 2804, 2805 of this title.

§ 2803. Trial and interim franchises

(a) Nonapplicability of statutory nonrenewal provisions

The provisions of section 2802 of this title shall not apply to the nonrenewal of any franchise relationship—

- (1) under a trial franchise; or
- (2) under an interim franchise.

(b) Definitions

For purposes of this section—

(1) The term "trial franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the franchisee of which has not previously been a party to a franchise with the franchisor;

(C) the initial term of which is for a period of not more than 1 year; and

(D) which is in writing and states clearly and conspicuously—

- (i) that the franchise is a trial franchise;
- (ii) the duration of the initial term of the franchise;

(iii) that the franchisor may fail to renew the franchise relationship at the conclusion of the initial term stated in the franchise by notifying the franchisee, in accordance with the provisions of section 2804 of this title, of the franchisor's intention not to renew the franchise relationship; and

(iv) that the provisions of section 2802 of this title, limiting the right of a franchisor to fail to renew a franchise relationship, are not applicable to such trial franchise.

(2) The term "trial franchise" does not include any unexpired period of any term of any franchise (other than a trial franchise, as defined by paragraph (1)) which was transferred or assigned by a franchisee to the extent authorized by the provisions of the franchise or any applicable provision of State law which permits such transfer or assignment, without regard to any provision of the franchise.

(3) The term "interim franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the term of which, when combined with the terms of all prior interim franchises between the franchisor and the franchisee, does not exceed 3 years;

(C) the effective date of which occurs immediately after the expiration of a prior franchise, applicable to the marketing

premises, which was not renewed if such nonrenewal—

(i) was based upon a determination described in section 2802(b)(2)(E) of this title, and

(ii) the requirements of section 2802(b)(2)(E) of this title were satisfied; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is an interim franchise;

(ii) the duration of the franchise; and

(iii) that the franchisor may fail to renew the franchise at the conclusion of the term stated in the franchise based upon a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located if the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(c) Nonrenewal upon meeting statutory notification requirements

If the notification requirements of section 2804 of this title are met, any franchisor may fail to renew any franchise relationship—

(1) under any trial franchise, at the conclusion of the initial term of such trial franchise; and

(2) under any interim franchise, at the conclusion of the term of such interim franchise, if—

(A) such nonrenewal is based upon a determination described in section 2802(b)(2)(E) of this title; and

(B) the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(Pub. L. 95-297, title I, § 103, June 19, 1978, 92 Stat. 328.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2802, 2804, 2805 of this title.

§ 2804. Notification of termination or nonrenewal of franchise relationship

(a) General requirements applicable to franchisor

Prior to termination of any franchise or nonrenewal of any franchise relationship, the franchisor shall furnish notification of such termination or such nonrenewal to the franchisee who is a party to such franchise or such franchise relationship—

(1) in the manner described in subsection (c) of this section; and

(2) except as provided in subsection (b) of this section, not less than 90 days prior to the date on which such termination or nonrenewal takes effect.

(b) Additional requirements applicable to franchisor

(1) In circumstances in which it would not be reasonable for the franchisor to furnish noti-

Mr. MAVROULES. Thank you very much for your very candid testimony this morning, Mr. Roberts. I want to thank all of you.

If we give you the impression that we are experts on these matters, please forgive us because we are not. That's why we're having the hearings here this morning.

Mr. BEDELL. Speak for yourself, Mr. Chairman.

Mr. MAVROULES. I think I can speak for all of us, Berkley. That's why we're having the hearing this morning.

However, I am going to cut across all the rhetoric. I am going to take two examples, from two gentlemen who are here this morning. Mr. Gaeta and Mr. Patrick have particular problems.

How do you respond to them? Mr. Gaeta is making an honest living and he believes in the free enterprise system. He was doing a flourishing business in a particular location, by the way, one of the best on the North Shore. And then he makes the statement, that he was being squeezed, squeezed to the point where he couldn't operate his business and he had to move or buy another location.

He can buy gasoline and sell it at 20 cents a gallon less than what he is forced to buy it for at the other location.

He offered twice the amount of money to Arco than what they were asking Shell for. Now you tell me how I can answer that man honestly and say to him everything is fair and you have a choice. Can somebody respond to me? I want to cut across all else because that's the heart of the problem.

Mr. ROBERTS. I'll be glad to give you my observation, and I understand we are now part of the same family. He is marketing with Shell with I am very proud to be a Shell marketer also along with my Union branded contract.

Obviously when you go in business you make a decision why you are going to go into business and find your notch and try to produce the bottom line as my father so aptly reminds me of every day at 84 years old, and the basic principle of going into these other businesses was a great entrepreneurial spirit but the ignorance of the basic thing that was making the cash flow work of not purchasing the real estate or making some arrangement to do that in the previous years was one of the questions that came to my mind, and it is an honest question I think.

I am not criticizing. I am just saying hey, you know, if I was in the position one of my better convenience stores or dealer locations—now my father and I purchased Shell Oil Co.'s property in the Charlotte area which was one of the areas in the Carolinas, and we were able to obtain the market on a market basis which is what Shell bought Arco out and that to me makes sense because the whole is worth more than the part, and that was the answer I would give to the twice as much value.

The PMPA laws also are very strange events about that, and that's the only way you can purchase a market. You can't go in and cherrypick, but in our case all of the dealers that we had or acquired 6 years ago are still dealers and very happy. I haven't had any suits filed against me.

Mr. MAVROULES. Let me ask another question. I can accept what you are saying.

Mr. ROBERTS. There was a decision made by Arco that had to do with economics, and legislating the basic philosophy of economics,

unfortunately there are going to be decisions made by people on a business bottom line decision.

Mr. MAVROULES. I have no argument with that, but the argument I do have is that I can buy a place 2 miles down the road and buy gasoline at 20 cents a gallon cheaper.

How would you respond to that?

Mr. ROBERTS. Well, I'm going to tell you, private brand gasoline in the Carolinas today is only maybe on premium with Shell, OK. I deal with Shell and Union only in brands, but I do deal, I do buy gasoline from, I buy, wire the gasoline—wire \$100,000 to wherever, Texas, and they ship it 3 weeks later, and the cost of money is worth so much, OK. That gasoline itself is purchased today probably on a pool margin of a cent and a half less.

Now let me underline one thing. The Carolinas, racks are independently—it is as competitive traditionally in North Carolina and South Carolina as anywhere in the country, particularly in the Charlotte-Leesborough market. I don't understand. I cannot buy gasoline on a private brand basis for 20 cents a gallon less. I will tell you that, gentlemen. He may be telling the truth, and I'm not saying he didn't, but I can't do it.

Mr. CHISHOLM. I will make a couple of observations about that scenario.

One is those are the types of horror stories that I hear all the time, some of them affecting our members. How can this be happening? How can that be happening? It's easy to zero in on a specific horror story and say how do you deal with that?

Couple of observations I would make on the specific circumstances—the first one is that the situation he described, I don't see how retail divorcement would help him. Barring a refiner from directly operating a service station, I don't see how that would directly benefit him if I understood the facts of the situation correctly.

Mr. BEDELL. I'm not here to say how great the bill is, but obviously if the major oil companies know they couldn't have sold it to Shell for half what he offered him to pay for it, he couldn't have sold it to Shell.

Mr. CHISHOLM. As I understand it, retail divorcement does not bar ownership. It only bars operation and you would have differences in the service stations from the oil companies and they could not only not operate—

Mr. BEDELL. There would not have been that incentive for Shell to get it, would there? That's why they want it. That's what the big oil companies want, to push independents, the individual entrepreneurs out so they can control everything I would think. Why else? What is the other purpose?

Mr. CHISHOLM. With all due respect, the numbers on the national basis don't justify that. The numbers that are issued by the Department of Energy for the performance profiles of the 25 major energy producers do not indicate any trend toward increasing the market-share of refinery direct operated stations.

Mr. BEDELL. This is a graph.

Mr. CHISHOLM. I can show you the—in our testimony we have a chart, too, which shows what the market share of the direct refiner operated stations have been from 1982 to 1984, and it has not varied more than a half a percent in that period of time.

Now maybe DOE's numbers and those numbers aren't corresponding, but if you look at the 1984 performance profiles, the numbers are pretty clear. It has been about 13.1 percent, 13.1 to 13.6 percent in the last 3 years.

Mr. BEDELL. Do you see that chart—do you think it's wrong?

Mr. CHISHOLM. I know it is inconsistent with the numbers I have seen from the Department of Energy.

Mr. BEDELL. Has anybody got figures from some place else than the Department of Energy? I trust those figures better than the Department of Energy. I think they're in bed with the big oil companies, frankly.

Mr. CHISHOLM. I'm not terribly comfortable with the numbers I see out of the Department of Energy, too, although I do have some respect for the Energy Information Administration and some of the numbers they generate because they have operated in the past and produced numbers that perhaps were not favorable to what the administration would like to have seen in some other areas. I do have some respect for the independence of the Energy Information Administration.

Back to the case at hand, I fail to see where ownership in a station, unless you are going to divest them of ownership in the station, particularly solves that particular issue.

The second thing, going back to what Mr. Roberts says, to some extent it is an economic decision that you have to live with. The 20 cents price differential, I can probably show you on any given day where that might occur in any particular market. It is not anything to be consistent, and during the falling oil prices that we see in the last 3 months, on any given day you may see retail prices differentiating 20 cents a gallon in a particular market, but overall, overall which is what I urge this committee to look at, if you look at the falling retail prices, falling retail prices has been greater from the end of December until the middle of March than the fall in crude prices in terms of contract crude prices.

Mr. ROBERTS. I want to make one comment, Mr. Bedell. I respect your comments and I respect the way you make your living because I use your product, but you know, I have been in the oil business almost 30 years in my time of being in it, and I have never seen any time where the major refiners were more sales- and customer-oriented in my whole life. It's totally flying in opposite fashion from what I see as a customer of nine refineries. They are out there hustling, looking for business. I mean every day, and I don't believe, I just don't believe some of the things that are being said here are consistent with what is happening to me in North and South Carolina.

Now it may be happening in other parts of the world, but it ain't happening in North and South Carolina. They're out there looking for business every day.

Mr. BEDELL. I won't take a lot of time. Really we're trying to do our job the way we think it ought to be done. We may have prejudices, sure.

Mr. ROBERTS. I understand that. I have prejudices.

Mr. BEDELL. But I guess the concern that I have—and if I'm wrong I need to know it—is that certainly in business we try to

make a profit. We try to use whatever strengths we have to make a profit.

It's my contention that if you have got money, you use that money to increase your position in the marketplace, if you've got a unique product.

I perceive that the big companies have money and power that the little individual doesn't have. This is my perception, and if that's wrong I need to know. It is my perception that the big oil companies want to control the market all the way from the oil to the consumer. I can see where they would want to do that, but it's my contention that they are using that power that they have got in order to stomp out the little guys in order that they can get into that position.

Now I thought these charts clearly showed that was the case. If that's not the case, then we are entitled to know, but certainly if you have got a reduction of 444 company-operated stations and 31,778 lessee-operated stations, it seems to me that that flight clearly indicates that that's the direction things are going. We shouldn't control how things are going, but I have always felt that the job of Government is protect the weak from abuses by the strong. It was certainly shown that there have been abuses, and I don't know how the devil an individual operator can hope to go to court against Exxon or Arco or whoever else it is. There's just no way on God's Earth he is going to be able to afford to do it. I can tell you from personal experience big companies do that because I have had it happen to me just directly. They knew I was going to go to court, that I couldn't defend myself, and I understand why they do that. They're out to make a profit. They're out to do it in whatever way they can. That's the way our system works, but it seems to me that's the job of our Government, to provide that protection.

Now apparently you believe that's not happening I guess, is that right?

Mr. ROBERTS. Well, as I say, I live in North and South Carolina and that's why my business—and as I made my statement you may have been out and didn't hear my introductory remarks. I am in business for myself and own my business along with my financial institutions. I go to the bank and borrow money to expand my business—a great deal of money.

As far as I'm concerned, the changes that are taking place in the marketplace may be working against some and may be working for others. It's a free market, Mr. Bedell, and the refiners that are being chastised by the dealers here and the face they wear in my marketplace is one of we are very sales oriented. We want bigger pieces of the business, and we want you to go out and we want to go out and get the business.

Now that's where we are seeing different faces, and in the North and South Carolina market is all I can comment on and that's what—I am here representing two national trade associations.

Mr. BEDELL. I'm not sure that divorcement is the right way to go, either. I see a problem, and it seems to me the problem ought to be addressed, but how is the best way to address it?

Mr. MONTAGUE. May I make an observation?

Mr. MAVROULES. Please, and then I want to ask a question of Mr. Chisholm. We're getting ready for a vote, so if we can wrap this panel up in about 5 minutes, we will.

Mr. MONTAGUE. I would like to make two points. One, I would like to call to this subcommittee's, this committee's attention the fact that several weeks ago we had a Shell dealer who used to be an Arco dealer contact us because under the terms of the settlement agreement in *Bogosian* this now Shell dealer wanted to debrand.

Shell took the position, first, this fellow was an Arco dealer. The Arco settlement did not provide for debranding but only the installation of separate tanks and pumps so, therefore, because this person is now a Shell dealer, the Shell dealer, the Shell agreement doesn't apply, and they refused to let him debrand. That shows the need for legislation.

Second, this fellow told us that he could buy open supply gasoline 20 cents less than what Shell was charging. The fellow confirms what Mr. Gaeta said.

The other thing I would just like to say, I would like to place into the record the agreements that were entered into in the *Bogosian* case, and you will see that all of the problems that Mr. Roberts raised are addressed and solved to the satisfaction of the oil companies in those agreements.

Mr. MAVROULES. Without objection, that will be included.

[The material referred to is being held in subcommittee files.]

Mr. MAVROULES. Mr. Chisholm, you stated before that you felt that divorcement was not the way to go. I take it that you had other ideas and maybe other solutions to the problem?

Mr. CHISHOLM. Mr. Chairman, the solution which PMAA supports in cooperation with the Service Station Dealers alluded to by Mr. Bedell in his opening statement is the amendments to the Petroleum Marketing Practices Act.

What we have tried to do is look at specific problems, try to address those specific problems in a manner that we felt would be helpful and be effective, and my testimony talks about some of the issues that are addressed and some ways to do that. I will not go into great detail on that.

I would like to say, Mr. Chairman, while I have the microphone, that it was with a great deal of regret that we learned that Mr. Bedell has decided not to run for another term in Congress.

He has been one of the more valuable advocates of small business interests in his chamber here and has become one of the more knowledgeable Members. I don't think anyone is an expert on this. He has become one of the more knowledgeable Members through the number of hearings he has chaired and participated in, and we will certainly miss him.

Mr. MAVROULES. We're going to miss him. Thank you very much.

Mr. Roberts, did you want to respond?

Mr. ROBERTS. I just wanted to ask about the *Bogosian* thing. Why do we need legislation if that's the case? Has it expired? Is that what you're saying?

Mr. MONTAGUE. It expires in 4 years, and No. 2, it only applies to class members. The example I gave of the Arco dealer who became a Shell dealer, the dealer has no remedy.

Mr. ROBERTS. What type of investment does it allow for? What kind of return on investment does it allow for, those tanks that will be taken away at the pump?

Mr. MONTAGUE. No tanks are being taken away. Read the agreement.

Mr. ROBERTS. I have, and—

Mr. MONTAGUE. The agreement was agreed to by the oil companies.

Mr. MAVROULES. Mr. Chisholm, would you recommend to the committee other ways of handling any particular problem that we have been discussing here this morning? You said you have some suggestions that might be better.

Mr. CHISHOLM. As I said, my prepared statement talks about H.R. 2046, and I'll be glad to provide whatever additional information that—

Mr. MAVROULES. Or any recommendations that you might have.

Mr. CHISHOLM. Sure. Thank you.

Mr. MAVROULES. Let me thank all of you. I want to inform the next panel I am not going to be with you. I have a briefing on Libya with the Armed Services Committee, and Mr. Bedell will chair the rest of the meeting, so I want to thank you for being here this morning.

Mr. Bedell will return in about 5 minutes and conclude the meeting.

[Recess.]

Mr. BEDELL [acting chairman]. The subcommittee will come to order.

First of all, I want to apologize particularly to the witnesses and to the people that are here as well. We hoped to have this over by 12 o'clock. Maybe if Mr. Bedell and some of the others had not talked quite so much maybe we would have been able to get through. I apologize to you.

Do any of you have any planes to catch or anything so that you need to get out? Well, if not, we will go by the order that's on the original plans.

Mr. Larkins, Robert Larkins.

Mr. LARKINS. Yes, sir; Mr. Bedell.

Mr. BEDELL. Are you with Exxon?

Mr. LARKINS. My name is Bob Larkins. I am a marketing vice president of the Exxon Co., USA.

Mr. BEDELL. Any summary you want to do would certainly be helpful.

Mr. LARKINS. I plan to be brief.

TESTIMONY OF ROBERT P. LARKINS, VICE PRESIDENT, MARKETING DEPARTMENT, EXXON CO., USA

Mr. LARKINS. Exxon markets motor fuels through approximately 17,500 branded service stations. Those 17,500 branded service stations include about 560 company-operated units. There are a number of reasons why Exxon operates this limited number of stations with company employees.

First, it provides us with a daily customer contact which enhances our understanding of changing consumer needs in the marketplace.

Next, it provides a profit opportunity and supports our commitment to branded marketing. In addition, our company-operated stores are frequently used to test innovations in gasoline retailing before introducing these programs to our dealers. For example, Exxon's retail automation equipment now being installed at dealer stores was first tested at company-operated stations. These tests would have been much more difficult to conduct at dealer stations.

Since the removal of Federal price and allocation controls, gasoline marketing has seen many changes and has been vigorously competitive. This competition and these changes have been responsive to changing consumer preferences and have worked for the benefit of the consumer.

The retail divorcement and open supply provisions of H.R. 3824 will restrict competition and further constrain the branded gasoline marketing system that has functioned well for dealer, distributor, supplier and consumer. We do consider the bill to be both anti-competitive and anticonsumer. We do not believe it merits consideration beyond this hearing.

Supporters of this legislation believe that it is necessary to protect the dealer from unfair practices and prevent refiners from taking over the retail marketplace with company-operated stores.

Evidence does not support this concern or the need for restrictive legislation. Although the number of dealer-operated stations is declining, this is not due to oil companies driving dealers out of business. Rather the decline in the number of stations is the result of marketplace economics brought about by inflationary cost pressures, changing demand patterns, and competitive marketing forces prompted by changes in consumer preference.

These changes are normal competitive responses that result in lower consumer prices and should be allowed to continue without further restrictive legislation.

Although the number of service bays at conventional stations is declining as a result of closed stations, the decline has been more than replaced by new service bays at other gasoline outlets and larger repair facilities and increasingly specialty shops offering tune-ups, quick lube changes and other automotive services.

Industry statistics make it clear that major refiners are not monopolizing the retail marketplace with company operations. According to the Lundberg letter, major oil companies operate only 4 percent of the service stations in the United States. Since the decline in the dealer-operated store is due to market forces rather than increased company operations, retail divorcement legislation will not prevent and should not prevent the closing of uneconomic stores whether they are dealer or company operated.

There is vigorous competition in the marketplace, and we know of no credible study finding unfair pricing by major refiners at company-operated stations. Exxon's policy at stations it operates is to price with competition. We do not use these stations to set margins of Exxon dealers.

Recent surveys of combined dealer margins for all grades, not just the lowest priced grades you have been hearing about, indicate

that dealer margins are approximately 17 cents a gallon in our primary east coast marketing areas. This is a level which allows efficient dealers to be profitable.

The turnover rate of Exxon dealers declined steadily from 14 percent in 1981 when controls ended to 7 percent last year. This is another indication that efficient dealers are generally able to operate their businesses profitably.

In New Orleans our latest price survey shows no company-operated station pricing below dealer price on any grade. In 11 cases where those company stores compete with Exxon dealers, the Exxon dealers were pricing lower than the company stores in 6 out of 11 cases. We are not converting New Orleans to company operations. The number of such units is two less today than it was in 1981. We did not convert Mr. Patrick's station to company operations, either.

Since 1982, the Exxon Co. operations have declined from 570 units to 560. Sales from these outlets have increased about 2,000 barrels a day, while our total gasoline has increased 22,000 barrels a day, so clearly our emphasis is on other types of operations.

Recently the charge of unfair pricing by major refiners has shifted from the retail level to the wholesale level. Because of unprecedented rate of declining crude prices over the last 3 months, the decline in gasoline prices at various levels of distribution was not uniform. This resulted in large differences between dealer and distributor buying prices. Competition in the marketplace actively responded and the unusually large differentials have already returned to more traditional levels.

The spot prices for regular unleaded gasoline declined 33 cents a gallon since last December, while during the same period Exxon dealer and distributor prices were reduced 37.5 cents a gallon and 38.5 cents a gallon respectively for the same product. During this time the spot crude price declined by 38.7 cents a gallon. Of course refiners' average crude acquisition costs declined less than this spot decline over the same period.

In my judgment, no set of regulations could have anticipated the complexity of this unprecedented situation or adjusted to it as quickly. It should be noted, importantly, that dealer margins generally increased during this period of adjustment, and their volumes held. Not only is there no evidence of unfair practices by refiners which would warrant divorcement, such legislation cannot be justified on the basis of consumer benefits.

Divorcement would remove a group of competitors and a form of competition from the retail marketplace. Logically this would result in higher prices to consumers. Certainly any study which concludes that constraints on competition will lead to lower prices must be viewed with suspicion.

The most thorough studies of the Maryland experience concluded that prices to consumers increased as a result of retail divorcement. It is very difficult to believe that dealers would be supporting this legislation if they actually believed that their margins would decrease as a result of it.

Another provision of H.R. 3824 allows dealers to purchase up to 30 percent of their monthly motor fuel requirement from other

sources. An underlying belief of the supporters of open supplies is that gasolines are the same or interchangeable.

Let me assure this committee that gasolines available in the marketplace today are not the same or interchangeable. Some will clean fouled fuel injectors in new cars and some will not. Some will keep new injectors clean and some will not. Some gasolines contain ethanol or methanol and others do not. It is clear that automakers and consumers are increasingly interested in product quality assurance and special features for the more efficient cars being produced today.

Exxon has just announced a new additive which I can assure you has direct and measurable benefits for the owners of new multiport fuel injected cars.

While Exxon does not require its dealers to purchase only Exxon motor fuels, we strongly believe purchasing Exxon's complete line of motor fuels is in their best interest. We cannot envision a scheme of buying unbranded product to replace one of Exxon's grades which would benefit the dealer in the long term, and less than a dozen of our dealer outlets are choosing to do so today. Exxon motor fuel grades are carefully designed to meet the various needs of the vehicle population in an optimum way. Our consumers have come to expect this full slate of motor fuel offering at Exxon service stations. The absence of grades preferred by a large number of Exxon customers could lead to customer confusion and ultimately damage Exxon's brand image.

We do not believe that further legislation is necessary to allow branded dealers to buy part of their supplies from others, nor do we think it is in their best interests to do so. Current laws are adequate to protect their rights. The Sherman, Clayton, Robinson-Patman and FTC Acts provide protection against predatory and other illegal activities.

Additionally, in 1978 Congress passed the Petroleum Marketing Practices Act which provides for protection for dealers from terminations or nonrenewals. Further legislation, further remedies we believe to be unnecessary.

In conclusion then, Exxon is strongly committed to dealer and distributor operations. These independent businessmen sell more than 90 percent of Exxon's branded motor gasoline. We work hard to support them by establishing competitive wholesale prices and making investments to modernize facilities and by developing other innovations attractive to consumers.

Our direct operation of some stores is very helpful in developing these innovations.

Divorcement legislation has been considered and rejected by Congress a number of times. We don't believe it is in the best interest of dealers, distributors, suppliers or consumers, and we would urge you to reject it again.

Thank you, Mr. Chairman.

[Mr. Larkins' prepared statement follows:]

PREPARED STATEMENT SUBMITTED BY EXXON CO., U.S.A., BY ROBERT P. LARKINS, VICE
PRESIDENT, MARKETING DEPARTMENT, EXXON CO., U.S.A.

This statement is submitted by Exxon Company, USA for the hearing record on HR3824. Exxon markets motor fuels through approximately 17,500 branded service stations, including about 3800 units leased to dealers and 13,100 units owned by distributors or other independent operators. The remaining 560 stations are company operated units.

There are a number of reasons why Exxon operates this limited number of stations with company employees. First, it provides us with daily customer contact which enhances our understanding of changing consumer needs in the marketplace. Next, it provides a profit opportunity and supports our commitment to branded marketing. In addition, our company operated stores are frequently used to test innovations in gasoline retailing before introducing these programs to our dealers. For example, Exxon's retail automation equipment now being installed at dealer stores was first tested at company operated stations. These tests would have been more difficult to conduct at dealer stations.

HR3824 would, among other things, prohibit Exxon from operating any company operated stations. It is a far-reaching legislative proposal designed to protect certain service station dealers from normal competition at the expense of other petroleum marketers and consumers. If enacted, it would

reduce competition in the retailing of motor fuel, decrease the incentive to maintain branded marketing, and provide consumers with fewer choices at higher motor fuel prices.

Since the removal of federal price and allocation controls, gasoline marketing has seen many changes and has been vigorously competitive. This competition and these changes have been responsive to changing consumer preferences and have worked to the benefit of consumers. HR3824 is both anticompetitive and anticonsumer, and we do not believe that it merits consideration beyond this hearing.

Current Trends In The Marketplace

For almost a decade prior to decontrol, petroleum marketers at all levels were precluded by government controls from making needed changes in their operations. During most of that period, petroleum marketers were told by government to whom they could sell, what portion they could supply to each customer, and what prices they could charge. Since petroleum supplies and prices were controlled, jobber, dealer, and refiner margins were largely a function of government regulation, not marketplace competition.

Since decontrol, however, the marketplace has been responding strongly to the consumer. The declining demand for motor gasoline which began in the late '70's has continued while petroleum supplies have been more than adequate to meet demand. Lower demand and increased operating costs have generally reduced earnings for petroleum marketers at all levels, but the consumer is enjoying the results of this highly competitive market.

Today, gasoline consumers have a wider range of choices than they had during controls. At many service stations, they now have an option of choosing either the convenience of using credit cards or the savings from paying cash. Other forms of nonprice competition have also resurfaced since controls were lifted. Gasoline marketing through convenience stores has become a significant part of the marketplace, and many marketers have accelerated modernizing and improving their facilities to make them more efficient and more attractive to consumers.

All of these changes and benefits -- lower prices, cash discounts, more choices, greater convenience, and improved facilities -- are in response to competition. While government regulation controlled volumes, prices, and margins in the '70's, today the real control is in the hands of the consumer. The result has been an extremely competitive environment where marketers at all levels are trying to change the way they do business in order to remain viable within an industry that is steadily shrinking. In other words, the competition in the marketplace is working.

Major Oil Companies' Salaried Operations Not the Cause of Declining Dealer Stations

Supporters of this legislation believe it is necessary to protect dealers from unfair practices and prevent refiners from taking over the retail marketplace with company operated stores. Evidence does not support this concern or the need for restrictive legislation. Although the number of dealer operated stations is declining, this is not due to oil companies driving dealers out of business. Rather, the decline in the number of stations is the result of

marketplace economics brought about by inflationary cost pressures, changing demand patterns, and competitive market forces prompted by changes in consumer preferences that have caused relatively inefficient stations to close. These changes are normal competitive responses that result in lower consumer prices and should be allowed to continue without further restrictive legislation.

Although the number of service bays at conventional outlets is declining as a result of closed stations, they have been more than replaced by new service bays at other gasoline outlets, at large automotive repair facilities, and increasingly at specialty shops offering tune-ups, quick lube changes, and other automotive services. The Automotive Parts and Accessories Association (APAA) estimates the total number of service bays in 1983, the latest data available, to be 981,300, up from 973,700 in 1978. In Exxon's case, more than 30% of our owned and leased stations have bays, and we continue to include bays in a substantial portion of our new and rebuilt stations.

Industry statistics make it clear that major refiners are not monopolizing the retail marketplace with company operations. According to the Lundberg Letter, major oil companies operate only 4.0% of the service stations in the U.S. This and other data do not indicate that company operated units are a dominant form of retail gasoline marketing for the major refiners. Since the decline in dealer operated stores is due to market forces rather than increasing company operations, retail divorcement legislation will not prevent--and should not prevent--the closing of uneconomic stores, whether they are dealer or company operated.

Active Competition - No Evidence of Unfair Pricing

There is vigorous competition in the marketplace, but we know of no credible study finding unfair pricing by major refiners at company operated stations. Exxon's policy at stations it operates is to price with competition. We do not use these stations to set margins of Exxon dealers.

Recent surveys of combined dealer margins for all grades indicate that dealer margins are approximately 17¢/gal. in our primary marketing area. This is a level which allows efficient dealers to be profitable. The turnover rate of Exxon dealers declined steadily from 14% in 1981 to 7% last year. This is another indication that efficient dealers today are generally able to operate their businesses profitably.

Government agencies such as the Department of Energy, the Department of Justice, and the Federal Trade Commission have concluded that divorcement of company operated stations would be anticompetitive and not in the consumer's best interest. The Department of Energy (DOE) testified in opposition to a similar divorcement bill before the U.S. Senate Judiciary Committee in October, 1985. The DOE said that divorcement "would inject the government unnecessarily into the marketplace, disrupting the competitive process to the detriment of competition, competitors, and consumers." They went on to say the evidence is clear that divorcement will have harmful effects on consumers by increasing prices, limiting service, or both.

The Department of Justice (DOJ), commenting on the same federal bill last October, maintained that retail divorcement legislation would have severe

anticompetitive effects and would cause substantial marketing inefficiencies that are likely to lead to higher gasoline prices for the consuming public. Commenting on another federal bill, the DOJ stated that divorcement would force a substantial restructuring of the retail petroleum industry and that there was no evidence indicating that the market had not served consumers efficiently.

The Federal Trade Commission's Bureau of Competition concluded that by denying refiners the possibility of increasing their efficiency through vertical integration, divorcement could add costs to the distribution of gasoline which would be borne by consumers. They maintained that prices would also rise as a result of the elimination of competition from refiner-owned stations.

During the first quarter this year, the charge of unfair pricing by major refiners shifted from the retail level to the wholesale level. Because differentials between dealer and distributor prices were greater during this period than is typical, some dealers and dealer organizations claimed they were being overcharged for gasoline.

The difference between dealer and distributor buying prices has varied historically. As gasoline prices rise, the difference has typically decreased. About a year ago, during a time of increasing gasoline prices, the difference for Exxon was less than 1¢/gallon at many locations. Conversely, when gasoline prices have fallen, the difference between dealer and distributor buying prices has typically increased. However, over time, the difference in these prices tends to seek a level that reflects the economic

value of the distributor's function in the distribution system. Historically, the magnitude of the difference in dealer and distributor buying prices has been heavily influenced by the rapidity of price change. The rapid rate at which prices fell during the first quarter was primarily responsible for the unusually high dealer/distributor price differences.

Competition in the marketplace responded to this situation, and the unusually large differentials have already returned to more traditional levels. The spot prices for regular unleaded gasoline declined 33.3¢/gal. since last December, while during the same period, Exxon's dealer and distributor prices were reduced 37.5¢/gal. and 38.5¢/gal., respectively, for the same product. During this time, spot crude declined 38.7¢/gal. Refiners average crude acquisition cost declined less than this over the period. No set of regulations could have anticipated the complexity of this unprecedented situation or adjusted to it as quickly. It should be noted that while some dealers have claimed price discrimination, surveys indicate that average dealer margins increased during this period of adjustment.

Divorcement is Anticonsumer

Not only is there no evidence of unfair practices by refiners which would warrant divorcement, such legislation cannot be justified on the basis of consumer benefits. Divorcement would remove a group of competitors--and a form of competition--from the retail marketplace. Logically, this would result in higher prices to consumers. Certainly any study which concludes that constraints on competition will lead to lower prices must be viewed with suspicion.

The most thorough studies of the Maryland experience were conducted by Purdue University Professors John Barron and John Umbeck by comparing prices at affected stations in Maryland with immediate competitors over the course of several years. The conclusions reached in the study indicate prices at newly franchised stations in Maryland which were formerly company operated rose 6.26 cents for full service and 3.08 cents for self service after retail divorcement. In addition, 11% of the stations required to be divorced closed after the legal deadline date of July 1979 and the divorced stations which continued in operation under a new franchise contract were open 8 hours less per week after divorcement. Based on evidence from the Maryland study, Professor Umbeck concluded that a national retail divorcement bill like HR3824 could cost consumers \$1 billion a year.

Supporters of retail divorcement have claimed that dealer margins decline due to the increased competition when major suppliers are removed from competing at the retail sales level. However, it is very difficult to believe that dealers would be supporting this legislation if they actually expected that their margins would decrease as a result of it.

Open Supply

Another provision of HR3824 allows dealers to purchase up to 30 percent of their monthly motor fuel requirements from other sources. An underlying belief of supporters of open supply is that gasolines are the same or interchangeable. Gasolines available in the marketplace today are not the same or interchangeable. Some will clean fouled fuel injectors in new cars and some

will not. Some will keep new injectors clean and some will not. Some gasolines contain ethanol or methanol and others do not. It is clear that automakers and consumers are increasingly interested in product quality assurance and special features for the more efficient cars being produced today.

While Exxon does not require its dealers to purchase only Exxon motor fuels, we strongly believe purchasing Exxon's complete line of motor fuels is in their best interest. We cannot envision a scheme of buying unbranded product to replace one of Exxon's grades which would benefit the dealer in the long term and less than a dozen of our dealer outlets are doing so today.

Current Laws Are Adequate

Current laws are adequate to protect dealers' rights. The Sherman, Clayton, Robinson-Patman, and FTC Acts provide protection against predatory and other illegal activities. Additionally, in 1978, Congress passed the Petroleum Marketing Practices Act (PMPA) which provides protection for dealers from terminations or nonrenewals. Further legislative remedies are unnecessary.

Conclusion

Exxon is strongly committed to dealer and distributor operations. These independent businessmen sell more than 90 percent of Exxon's branded motor gasoline. We work hard to support them by establishing competitive wholesale prices, by making investments to modernize facilities, and by developing other innovations attractive to consumers. Our direct operation of some stores is very helpful in developing these innovations.

Divorcement legislation has been considered and rejected by Congress many times. It is not in the best interest of dealers, distributors, suppliers or consumers. We urge you to again reject this unnecessary and anticompetitive proposal.

Mr. BEDELL. I presume that your statement that we have rejected it before means that you generally believe that Congress usually acts properly in what we do?

Mr. LARKINS. I did not mean to imply that by my statement.

Mr. BEDELL. Mr. McDonald, the vice president of Atlantic Richfield Co.

TESTIMONY OF S.L. McDONALD, VICE PRESIDENT, DISTRIBUTION, ATLANTIC RICHFIELD CO., ACCOMPANIED BY RICHARD C. MORSE, ATTORNEY

Mr. McDONALD. With me today is Dick Morse, counsel to Atlantic Richfield.

I would like to begin my remarks by expressing my company's unequivocal opposition to this bill. We believe the legislation is totally unjustified and anticompetitive and will lead to higher prices with the consumer footing the bill.

As you have heard this morning, the gasoline marketplace has changed substantially over the last several years. As you might expect, those alterations have caused a great deal of stress to those in the industry, and that not only includes dealers but also jobbers and refiners.

Why have the changes taken place? Do refiner-operated stations engage in predatory pricing, or do refiners treat their dealers unfairly? Those are the charges brought by the advocates of this particular legislation, and we think that they are wrong.

The real reasons for the trauma in gasoline marketing are really not that difficult to find. Demand is down 10 percent since 1978. The country has surplus refining and marketing capacity, and mass merchandizers have successfully captured much of the automobile service work that was once done virtually exclusively by dealers.

Most significantly, consumer preferences are changing. Americans search for the lowest possible prices. When gasoline was 36 cents a gallon back in 1971 or 1972, a few cents difference didn't seem to make that much difference, but when gasoline hit \$1 a gallon plus, drivers paid attention. This is exactly why nearly 80 percent of all gasoline today is purchased through self-serve pumps.

Adjusting to that type of dramatic change really isn't very easy, but dealers who have responded to the price-conscious market are successful. They have reduced their overhead. They have implemented innovative marketing techniques, and they have decided that it's better to sell more gallons at a reduced margin of profit rather than to lose their customers to lower priced competition. We think that kind of initiative and innovation is important today and just not in gasoline marketing, yet the proposed divorcement legis-

lation would take us in the opposite direction, away from free market initiative, and toward Government controls.

I can assure you that despite what supporters of this legislation say, there is nothing to be gained by forcing refiners to dispose of company-operated stations, and a good deal to be lost.

First of all—Mr. Larkins alluded to this—there is no movement toward company-operated stations by the majors. The majors operate just a little over 3 percent of the company's service stations today, and that tiny fraction is just about the same as it was 5 or 10 years ago, and despite the dramatic reduction that has taken place in service stations.

The question is: Does a 3-percent penetration suggest the majors are trying to drive their dealers out of business? If so, they don't seem to be very successful at it.

Second, there is also a body of laws that protect dealers. These include the antitrust laws and PMPA, and every Government study that I have seen supports the proposition that there is absolutely no predatory pricing and no justification for divorcement.

Third, and very importantly, the economics of company-operated stations are the same as they are for independents. If they are to succeed, they must price competitively, and the beneficiary, of course, is the consumer. Legislation that restricts or eliminates competition will produce higher prices and hurt consumers.

Now what conclusions can be drawn from this? Divorcement can only be protection or effective protection to dealers if it eliminates competitors from the gasoline market to allow prices to rise above competitively dictated levels. Studies have supported this effect. Thus the protection sought by supporters of H.R. 3824 is protection from fair and vigorous competition.

Now I would like to turn just for a second to open supply. Essentially what this would do is allow a dealer to sell nonbranded gasoline at a branded station. A sign would be put on the pump to inform the motorist after he has entered the service station that the gasoline that he was buying is not what he expected—a very unusual marketing technique to say the least. Once again, we are considering interference in the marketplace that really isn't needed in any practical sense.

Dealers already have the right to buy gasoline elsewhere, and the *Bogosian* settlement affirms their right to sell multiple brands if they so choose. I think it was Dr. Umbeck who said multiple brand marketing is rare today and tens of thousands of dealers who own their own service station property could utilize that technique but they avoid it because they know that consumers prefer a single brand—simply a matter of confidence and expectation.

This type of legislation is disturbing because it conflicts with the basic premise of PMPA that a brand is valuable to dealers. Can you expect the same level of refiner support for its brand if a dealer flying the flag pawns off an unknown product? In our opinion, it is also in direct conflict with well-established consumer protection legislation designed to avoid misleading sales techniques.

Open supply would adversely affect consumers. Millions of motorists purchase a particular brand of gasoline. Imagine the anger of a motorist who drives in an Arco station, finds the sign on the pump proclaiming X, Y, Z gasoline. We have a deceived, disap-

pointed motorist, and that person may stop buying Arco gas. I am convinced that that's bad for every dealer that sells our brand, and certainly it's bad for my company.

What about the potential implicit in the bill for mislabeling, mixing together of different gasolines and environmental damage? In today's world where cradle to grave liability for products exists or is eagerly sought after, no refiner can be indifferent to the possibility that his product might be substituted for or without his knowledge contaminated under circumstances over which he has no control.

Moreover, the *Bogosian* settlements we do have the safeguards necessary to protect the legitimate interests of refiners. H.R. 3824 on the other hand would give the refiners no such assurance, no protection against claims by consumer groups for commingling and mislabeling, no protection against claims by Federal and State agencies for environmental injury for such things as leaking tanks.

Finally, and an important point that we believe, I think that the enactment of open supply legislation has got the potential to increase the difficulties that various States are having with people avoiding petroleum taxes. The problem stems from various retailers who buy product on the outside from unscrupulous wholesalers who evade paying taxes.

In New York State there was an estimate that New York was losing about \$200 million a year in evaded taxes. That State recently passed new laws attacking this kind of thing. Since this kind of law was passed, their tax revenues have gone up about \$80 million; H.R. 3824 in my opinion would simply make it more difficult for New York and other States to audit and seek compliance with their tax laws.

Let me sum up our view. First of all, there is no reason to think that this bill would cure the problems of oversupply. It is not going to influence consumers seeking bargain gasoline or in any way slow the process of change in the marketplace.

It would have the same effect that Government controls always have. It will produce higher prices. It will weaken branded marketing, hurting not only American motorists, but also the very dealers that this bill purports to help.

We urge the members of this committee to resist imposing legislative constraints on a marketplace that comes very close to the ideal as Mr. Roberts talked about—offering the widest choice of product and services at very low competitive prices.

Thank you.

[Mr. McDonald's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF S.L. McDONALD, VICE PRESIDENT, DISTRIBUTION, ATLANTIC RICHFIELD CO.

**ATLANTIC RICHFIELD COMPANY COMMENTS ON HR-3824
THE MOTOR FUEL SALES COMPETITION IMPROVEMENT ACT OF 1985**

HR-3824 would require that integrated refiners cease operating company stations, and thereby remove a class of competitors from the marketplace. The bill also has an "open supply" provision which would permit a branded dealer to sell non-branded product in his station by displaying a disclaimer on the dispenser that the product was not that of the branded refiner franchisor. Atlantic Richfield opposes HR-3824 for the following reasons.

THE CHANGING GASOLINE MARKETPLACE

Intense competition returned to the gasoline marketplace after it was deregulated in January, 1981. With a deregulated marketplace, some dealers and their trade associations have stepped up their efforts to achieve enactment of protectionist legislation designed to insulate their businesses from the realities of the current competitive environment.

Their claim is that they are being driven out of business by refiners who engage in predatory pricing, subsidize their company operated stations, implement inequitable rent increases and engage in other unfair practices.

Their legislative efforts at both the state and federal level have produced a wide range of bills running the gamut from divorcement to open supply, minimum mark-up and restrictive pricing legislation, to name just a few. Such legislation is reminiscent of the regulatory environment of the seventies which produced high gasoline prices, high margins, frozen business practices and subsidization of the inefficient.

Unlike many marketers, those dealers seeking protectionist legislation have not prepared themselves for the turbulent competitive environment of the eighties and are seeking to re-establish the insulation from competition they enjoyed under controls.

It is true that the service station population has been declining. However, dealers are not the only ones affected by the difficult gasoline marketplace of today. They are but one segment of an industry which has shrunk at every level since decontrol. Some jobbers have gone out of business, others have merged or been acquired. Over a hundred refineries owned by independents and majors alike have been shut down in the past five years. Virtually every oil company has shed losing operations and restructured or contracted in response to an intensified competitive environment and declining demand.

The trauma of today's gasoline marketplace has nothing to do with unfair marketing practices as alleged by supporters of legislation such as HR-3824. In fact, it is due to:

- Less demand for gasoline; down almost ten percent since gasoline demand peaked in 1978.

- Excess refining capacity. In 1985, the nation's refineries ran, on average, at approximately 77 percent of capacity.
- Increased costs of doing business.
- Changes in consumer preferences; these have played the major role in the "shake out" occurring in gasoline marketing especially in regard to "full service" stations. These changes include the desire on the part of most consumers to purchase gasoline at the lowest possible prices by serving themselves. About 77 percent of the gasoline purchased in the United States is purchased through self-serve pumps versus only ten percent purchased through that mode of operation in 1972. High volume outlets such as "gasoline pumpers" and convenience food stores with self-serve pumps have been particularly successful in capturing a large share of the price conscious consumer market. Specialty automotive shops, mass merchandisers and new car dealers have also gained an increasing share of the automotive product and service market which has contributed to the demise of many "full-service" gasoline stations.

The allocation and price controls tended to mask the changes taking place in the marketplace or stop them entirely. With deregulation, an entire array of changes were unleashed upon the marketplace in a very short period. Many dealers have thrived on these changes and profited. Typically, they are those who reduced their costs of operation, employed innovative marketing techniques and adopted a high volume, low margin strategy to appeal to the price conscious shopper. Many also developed ancillary businesses at their locations to offset lost revenues from their declining service garage business.

Others have not been so successful. They have not adapted. Some have gone out of business. Others have seen their profits erode. This is not the result of some plot on the part of major refiners to drive them out of business. Instead, it is the result of a turbulent, intensely competitive marketplace affected by declining demand and excess capacity which has caused downward pressure on profit margins. **With or without divorcement or open supply, the number of service stations will continue to decline until the demand for their services is balanced with the available supply.**

Our comments relative to the specific provisions of HR-3824 are as follows:

DIVORCEMENT

Divorcement produces higher prices to consumers.

A study by Purdue University Professors John Barron and John Umbeck dramatically documents this anti-consumer impact. See the attached Exhibit "A" which summarizes their findings.

In addition to divorcement, Maryland also passed an anti-competitive statewide uniform pricing law. What resulted is clearly shown in the attached Exhibit "B" depicting the difference in pump prices between the Philadelphia and Baltimore Metropolitan areas on an ex-tax basis. During the pre-divorcement time period in January 1979, pump prices between the two metropolitan areas were only about 1¢ apart. By December 1985, self-serve prices in Philadelphia were about 1.6¢ to 2.5¢ less than Baltimore, depending on grade, while full-serve prices were an astounding 11¢ less in Philadelphia. "The Lundberg Letter" of February 7, 1986 shows how weighted retail ex-tax gasoline prices by state compare to the national average price. According to "The Lundberg Letter", Maryland, the District of Columbia, Connecticut, and Virginia, which all have various forms of divorcement statutes, all rank in the top ten.

It is no wonder that full-serve dealers are the most ardent proponents of divorcement legislation. Company operated stations generally price on the low end of the price spectrum. Divorcement removes a class of competitors from the marketplace. We believe that consumers are best protected by markets in which multiple suppliers are allowed to compete for their business and offer a full menu of prices. When legislation is enacted that reduces or restricts the number or type of competitors, the consumer invariably pays higher prices.

Stations operated by major refiners also provide benefits to the entire dealer organization. One benefit is that they are used to test new techniques. Such experiments are often too expensive or risky to be tested by an individual dealer. Once experimental programs prove successful, refiners can make them available to their independent dealers. Company operated stations also provide refiners with first hand knowledge regarding consumer desires and market trends. This knowledge is imperative in today's intensely competitive, rapidly changing marketplace. The draft DOE study, "Deregulated Gasoline Marketing -- Consequences for Competition, Competitors and Consumers", found that if company operated stations of a given brand do well, then independent dealers of the same brand also do well. The point is that if the company stores portray a good image to the public and attract a substantial clientele, then that success tends to increase the opportunities for success for the independent dealers of the same brand in the area. In other words, their fortunes are intertwined.

There is no rationale to support the view that major refiners will drive independent dealers out of business.

The concern expressed by some about the number of major refiner company operated stations and their ability or intent to force independent dealers out of business is unwarranted as the following statistics¹ clearly show:

- The 15 majors operated 2.1% of all retail service stations in 1972.
- 3% of all stations in 1977.

• 3% in 1981.

• And the 16 majors, per the "Lundberg Letter", operated just 3.33% of all stations in 1984.

The Lundberg publication noted that jobbers and private branders have placed more emphasis on company operations than the majors. Specifically, Lundberg stated that members of the Society of Independent Gasoline Marketers of America, SIGMA, had some 12,600 company operated stations while members of the Petroleum Marketers of America Association, formerly NOJC, had about 16,000. A 1985 "Lundberg Letter" indicated that the total number of major oil company operated stations remained stable when compared to 1984.

These statistics mean that someone other than the 15 or 16 major refiners operated about 97% of all the service stations. Certainly there is no evidence of a movement to company operated stations by the major refiners. Thus, the claim that major oil companies are driving their dealers out of business through the use of company operated stations lacks credibility.

Furthermore, no logical reason can be given to explain why major refiners would want to damage its network of independent dealers. Any such action that weakened its branded independent dealer operations would only serve to undermine the refiner's competitive position and thereby reduce its profits.

Proponents claim that divorcement legislation is required since refiners engage in predatory pricing through their company operated stations to the detriment of their independent dealers. Atlantic Richfield can only speak to its own operations. ARCO company operated stations are run by a subsidiary company. The facilities operated by the subsidiary company are leased from Atlantic Richfield on the same terms as those leased by ARCO independent dealers. Company operated facilities and ARCO independent dealers supplied by Atlantic Richfield that are located in the same competitive geographic area pay the same price for ARCO gasoline. Therefore, these company operated stations can only be a "threat" in the sense that if they are more efficient, they may then be able to offer consumers lower prices.

¹The Department of Energy (DOE) published statistics on the average number of refiner operated stations for 15 major refiners for the seventies and through September, 1981 when DOE stopped publishing such statistics. The Lundberg Company has published data covering the U.S. service station population. Lundberg also published a survey of company operations covering 16 majors for 1984 (Sohio was not included in the DOE 15 majors category).

Many prominent organizations have rejected the concept of divorcement

The Department of Justice, the Department of Energy, the Bureau of Competition, Consumer Protection and Economics of the Federal Trade Commission and the American Bar Association have recommended against divorcement bills. The Department of Justice has taken the position that such laws should only be enacted if there is a serious failure on the part of the free market to allocate goods and services. They have found there is no evidence to support such a conclusion.

Furthermore, there is already a body of laws in effect that protects dealers. These include (1) the anti-trust laws regulating pricing activity and (2) the Petroleum Marketing Practices Act which prohibits arbitrary lease terminations and nonrenewals. State legislatures have also overwhelmingly rejected divorcement bills. Since 1974, legislation dealing with retail divorcement was introduced over 200 times. Only Connecticut, the District of Columbia, Delaware, Maryland and Virginia have enacted such laws. Florida had a divorcement statute but it was recently repealed. Congress has also considered and rejected divorcement several times. In an effort to cut through the rhetoric involved, Congress dropped divorcement from the PMPA and mandated a study which concluded, two years later, there was no justification for divorcement of refiner operated stations.

OPEN SUPPLY

HR-3824 would allow service station dealers the right to purchase gasoline from sources other than their refiner-supplier. The rationale for this provision is that it would increase competition in the gasoline marketplace and allow dealers to buy gasoline at lower prices.

There is no need for open supply legislation since dealers already have the right to buy gasoline from other sources.

Dealers supplied by the major integrated refiners already have the right to purchase gasoline from outside sources. The Bogosian consent decree confirms the rights of dealers to determine if multiple brand operations are an attractive and economically viable way of doing business.

One of the disturbing aspects of HR-3824 is that its effect would be to weaken gasoline brand marketing to the detriment of the dealers this bill purports to protect.

Refiners and their branded dealers have historically entered into supply agreements to their mutual benefit. Thousands of branded dealers throughout the nation lease stations from refiners. This arrangement has enabled thousands of individuals to enter the service station business with a minimum of investment. The purchase of a prime property and construction of a new facility is extremely expensive. Very few dealers have the financial resources to make such large scale investments. Furthermore, refiners continually make improvements to their stations which require extensive sums of money.

In addition to the investment in physical facilities, refiners also commit substantial resources to other areas that aid their branded dealer organization. These include training programs, business counseling, research to develop better products and new marketing techniques, advertising and sales promotion and a whole host of other services designed to enhance the value of the brand. Indeed, the very foundation of the PMPA is a recognition of the value of a brand to the dealer.

The rationale for the branded marketing relationship between dealers and refiners is much different from those in which purchasers rely on the vagaries of the spot unbranded market where the long term security of supply can be tenuous and prices can vary widely. Independent branded dealers enter into agreements with major refiners because they are assured of a stable source of supply as well as obtaining the many benefits of a well known brand to help make their businesses profitable. Refiners commit to branded marketing because they believe their dealer organization represents a stable, efficient way to market their products.

Tens of thousands of dealers own their own property or lease it from a non-refiner. They obviously can market any way they want to and almost universally elect to go with one brand because they know consumers are not responsive to mixed brand marketers.

Passage of HR-3824 will produce an atmosphere which will encourage dealers to buy elsewhere. As a result, refiners will be hard pressed to economically justify the large investments needed to support a branded marketing operation. Legislation designed to weaken the relationship between refiners and their branded dealers will adversely affect both groups.

Motorists will be misled if HR-3824 is enacted.

Millions of motorists purchase gasoline on the basis of brand preference. For example, customers purchasing ARCO branded gasoline know that these products are supplied by a company which has a reputation for dependability and integrity and which stands behind its products.

Customers are attracted to stations of a specific brand through the utilization of highly visible, readily identifiable color schemes, logos and signage. Imagine the dismay and anger of a motorist who drives into an ARCO station, stops his car at the pump island and sees a small sign on the pump proclaiming that the pump dispenses "XYZ Gasoline". The very reason local ordinances frequently require prominent price signs is to permit the motorist to shop before he is committed by driving up to the pump. The open supply provision is, in reality, a blatant "bait and switch" fraud on the consumer.

It is important to realize that motorists select the brand they desire to purchase before they enter the station property and not when they stop their car at the pump island. The motorist who is deceived will most likely vent his anger at the refiner whose "flag" flies at the station. He may even cease purchasing the brand which is not only detrimental to the refiner but also to the other dealers who market that brand.

HR-3824 provides inadequate protection against the potential for mislabeling, commingling and environmental damage.

Considering the enormous potential liabilities associated with flammable and/or toxic substances, air and water pollution controls, and potential problems with hydrocarbon emissions, much more stringent product identification requirements are needed. In today's world, where "cradle to grave" liability for products exists or is eagerly sought, no manufacturer can be indifferent to possible substitution for, or contamination of, his products by others over whom he has no control.

The Bogosian settlements contain necessary and appropriate safeguards designed to protect the legitimate interests of the oil company defendants in two areas. First, they protect against the mislabeling and commingling of gasoline and impose various duties on the dealers to clean out tanks and pumps before switching from one brand of gasoline to another. They also give the defendant a right to monitor the dealers' labeling of pumps to protect against confusion and deception to the public.

Second, many of the decrees (including ARCO's) also provide safeguards to protect the defendants from claims for environmental damage which might arise from the storage and dispensing of third party gasoline by the dealer. Thus, the decrees establish strict standards governing the installation and operation of additional tanks and pumps and require that the dealer do certain things such as maintaining appropriate insurance.

The proposed legislation contains no such safeguards. The statute offers the refiner-lessors no assurance that they would be protected against claims made by others, such as consumer groups, for commingling and mislabeling and by the EPA and state agencies for environmental injury arising out of leakage from tanks installed by the dealer or by the storage of corrosive fuels.

The potential for increasing the problem of petroleum tax evasion.

There have been many reports from certain states which document that unscrupulous retailers and wholesalers have been defrauding the states out of petroleum taxes. New York State has recently enacted new laws designed to cope with this growing problem. Much of the problem relates to certain retailers purchasing gasoline from outside sources. With the major problem of petroleum tax evasion, enactment of HR-3824 could hamper state governments' in attempts to audit and insure compliance with their tax laws.

CONCLUSION

HR-3824 is premised on the notion that independent dealers are threatened with extinction by the actions of refiners. This is not true.

The gasoline marketplace is changing, but we believe those changes are the result of shrinking demand as well as competitive and economic factors that affect all marketers. Those marketers who adapt their operations to the changing conditions in the marketplace will survive and profit in the eighties and beyond.

Government studies as well as private studies have documented the changes occurring in the marketplace, rejected the theory of predatory actions on the part of refiners and have acknowledged that the consumer is the beneficiary in a marketplace characterized by intense competition. The draft study, "Deregulated Gasoline Marketing--Consequences for Competition, Competitors, and Consumers", published by DOE in March, 1984 succinctly states the case: "The market changes are not the result of anti-competitive activity, but the result of the competitive process itself forcing adaptation to these underlying structural changes. The many legislative proposals now circulating at both the federal and state level are unwarranted efforts to block or undo the effects of these market forces. At best they are useless. At worst they are expensive counter-productive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help, while they harm the competitive process, competitors and consumers."

Compared to regulated systems, the free market system is enormously superior. It is more productive, more efficient and more effective in providing the goods and services consumers need at the lowest possible prices. Thus, we urge the rejection of HR-3824.

4/17/86

Exhibit "A"

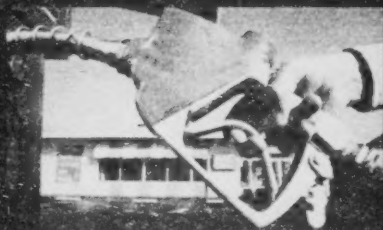
The Maryland Divorcement Experience Updated:

A Summary By

John M. Barron and John R. Umbeck
Professors of Economics
Purdue University

The state of Maryland enacted divorcement legislation which, effective July, 1979, prevented refiners from operating retail gasoline service stations in that state. Because of the potential impact of this "divorcement" legislation, Professor John Barron and I conducted a research project measuring the effects of divorcement legislation in the state of Maryland. This study was undertaken in the fall of 1981 and was underwritten by the Committee of Independent Refiner Marketers.

The study clearly revealed that the legally forced franchising of company operated stations in Maryland had several negative impacts, including higher gasoline prices at stations directly affected by the law, higher gasoline prices at immediate competitors, shorter station hours, and a decline in the number of service stations in operation within the state. In November and December, 1982, we undertook an extensive update of our original research. That update has been underwritten by the Atlantic Richfield Company. As was the case with the original study, control of all phases of the study, from design through analysis, remained with the authors. This report summarizes the latest findings. For those interested in reviewing the technical details, a copy of the complete study is available upon request.



Conclusions

After updating our original study we conclude that our earlier results still hold. Maryland's divorce law legislation has caused retail gasoline prices to increase not only at stations directly affected by the law but also at nearby competitors. The new updated study further substantiates that the legislation has led to fewer service stations being available to Maryland motorists and shorter hours of operation at many remaining stations.

The updated study relied upon a different data source (the Lundberg organization) than the original study (refiner supplied information) and included a substantial validation of the data provided by that independent source. The consistency of the findings of the two studies provides further substantiation of the accuracy of the conclusions. Allegations of possible data bias, while certainly a potential problem in any economic experiment, do not appear to affect this particular study of the Maryland divorce law experience. Each of our tests, direct and indirect, revealed at each stage no evidence of error (either deliberate or accidental) in the data.



Study Detail

Original Project Design

In our original study, we contacted representatives from each oil company which operated stations directly affected by divorce law legislation. Each received a questionnaire requesting information on all of their company-operated stations and their nearby competitor's stations. We asked for information on retail prices for each grade of gasoline and each type of service over a five year period before and after divorce law took place. We also collected data on the different types of services offered at each station and the hours they remained open each week. Armed with this data, we isolated and measured the actual effects of the divorce law and we constructed a detailed picture of about 150 local Maryland gasoline markets. Each market contained one gas station which was legally forced to divorce and four or five nearby competitors. Within these local markets we tracked each station's retail prices of gasoline sold, both self and full serve, and all grades available. These prices covered a period before and after the date of divorce for each company-operated station. Utilizing this technique, we separated out the effects of deregulation, crude oil price changes, declining aggregate demand for gasoline, and so on. All that remained was the effect of legal divorce.

Over the last year, this study has been carefully examined by experts in a variety of fields including professional statisticians at an academic journal, researchers at the American Petroleum Institute, state and national gasoline dealer associations, legislators and governmental research teams. The study has encountered only one significant criticism, a possible bias in the data because all of our information was provided by the oil companies which were affected by divorce law. These companies may have had an incentive to deliberately distort the data to make it appear that divorce led to higher prices and less consumer service. If companies could successfully create this impression, the critics said, perhaps similar legislation would not be passed elsewhere. Of course, this concern is legitimate. As any economist knows, individuals always have incentives to bias data in their own self interest; oil companies are no exception. In anticipation of this, we had built into the original study a number of checks for possible data bias and, while we found no evidence of any distortions, it was still possible that some incorrect information was given to us. The opportunity to update the original study in the fall of 1982 provided the means to check the accuracy of the original data even further.

New Project Design

The services of Mr. Dan Lundberg, a well known petroleum market price observer, were employed to re-survey the entire sample from the original study. None of the oil companies was notified of the re-survey. Over a three-day period, all the prices at all the pumps from all the stations in the sample were collected along with information on the geographic location of each station and the types of services provided. To further guarantee the integrity of the information, I employed an economist from the University of Delaware to randomly re-survey a portion of the stations surveyed by Mr. Lundberg's survey team. No one, including myself, knew which stations would be checked. The Lundberg data was determined to be completely accurate when compared with the re-survey results.

The new and independently verified data was then analyzed using a statistical technique known as multiple regression analysis. This procedure allows us to account for the effect of a number of variables other than divorce on the retail price. In this fashion, we were able to detect the effects on retail gas prices of the number of pumps and hoses at each station, credit cards, cash discounts, self and full serve, service bays, convenience stores, and so on.

The first test with the new data was to reproduce our original study with the new information included to see if our original results were still valid. *Our findings confirmed our earlier conclusions. Divorce legislation in Maryland caused a significant increase in retail gasoline prices at those stations directly affected by the law and at their nearby competitors.* In particular, a typical company-operated station before divorce was selling regular and unleaded gasoline self-serve for 2.32 cents per gallon less than their local competitors. The same station was selling full-serve gasoline for 2.97 cents per gallon less than their competitors. After divorce, the newly franchised stations (formerly company-operated) raised their prices on average 3.08 cents per gallon on self-serve and 6.26 cents per gallon on full-serve. During the same period, the local competitor stations increased their prices for regular and unleaded gasoline an average of .86 cents per gallon on self-serve and 3.14 cents per gallon on full-serve. In addition, 11 percent of the stations required to be divorced closed after the legal deadline date of July, 1979. About half of these were still closed at the end of 1982. Furthermore, divorced stations which continued in operation under a new franchise contract, were open 8 hours less per week after divorce.

Detailed New Project Results

The new data provided two additional tests which are of interest. First, it provided additional price information for the year 1982, beyond that contained in the original study. When we added this new data to our original sample and tested for the effects of divorce, we found no significant differences from our original conclusion that legally forced divorce led to higher retail gasoline prices in Maryland.

The second test used the exact geographic location of each station to check for the data bias which was mentioned earlier. Now that we know the address of each station we discovered that in several cases a divorced station reported the prices from a competitor which was either another divorced station or a competitor of another divorced station. What this means is that two different oil companies were reporting prices on the same station. This overlap in reported prices allowed for two independent tests for data bias. The first test used the overlap created when one divorced station reported as a competitor the prices of another divorced station owned by another oil company. When this occurred, we discarded the prices at the first divorced station which were collected by the company which owned it and used instead the prices at that station which were reported by its competitor. If the refiner which owned the divorced station had "cheated" or biased the reported prices it would show up in the new test. The results of this test showed only minor differences from the original results. This suggests that even if we throw out all of the prices at the divorced station which were collected by the refiner which owns that station, and substitute prices collected by their competitors, our results will be the same. *The bottom line is this test revealed no data bias.*

The second test is less subtle and much more direct. When an overlap in data reporting occurred, we plotted the prices at the overlap station. Since we had two refiners reporting prices at the same station, any bias would create a difference in the reported price on any given date. This procedure was followed for each overlapping station. *We found no significant differences in the prices reported and no evidence of any data bias.*

Additional Data Verification

The updated study of the Maryland divorce experience, summarized herein, provided an external validation of the original study's data base by using a second source for price data not subject to the potential bias to which the oil company data may have been subject. Although the updated study produced substantial assurances of the accuracy of the data, it did not *directly* provide a verification of the accuracy of price data for the period *prior* to the implementation of divorce.

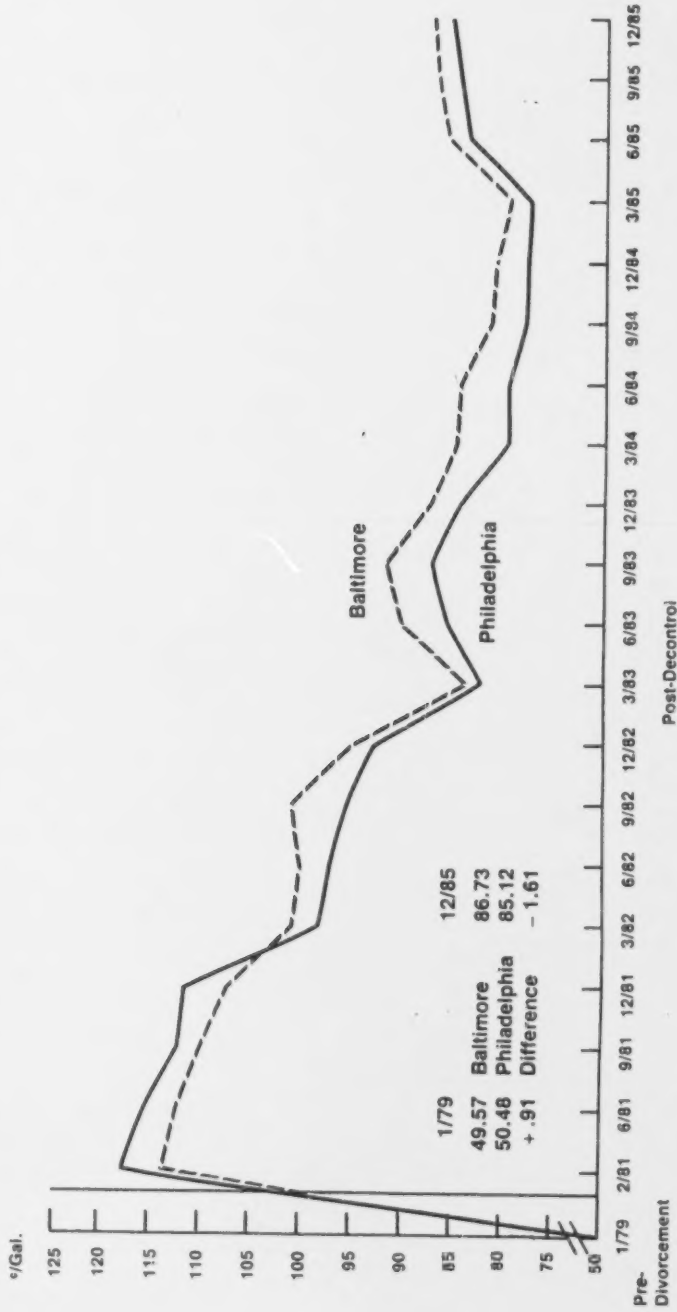
Because of concerns with this lack of a direct verification, an additional check was conducted to provide such a verification. Historic price data obtained from the Lundberg organization was compared to the data used in my original study and the update to that study. Two different Lundberg surveys were purchased — an October, 1978, census of all Maryland service stations and their prices; ten Baltimore price surveys distributed over the period July, 1977, through October, 1981.

When comparisons were made between the Lundberg prices and the prices originally provided by the oil companies, *no evidence of any bias or cheating in the original data was found.* A total of 352 of the original sample of 600 stations were matched to the October, 1978, Lundberg census. Of these two sets of prices, more than 70 percent matched perfectly. The remainder included errors, but the errors were evenly distributed in both directions, and of minimal magnitude, ruling out any bias. Forty-one of the original 600 stations were included in the regular Lundberg Baltimore price surveys. Lundberg's prices for each of the 41 stations were compared with the original price data provided by the oil companies. These comparisons were conducted in 10 separate months during the period July, 1977, through October, 1981. In all, a total of 410 price pairings were compared. *All comparisons were within acceptable limits.*

These two checks upon the pre-divorce price data provide even stronger evidence that no bias or cheating is contained in the data. When combined with earlier data verification, it is clear that the findings of both the original Maryland study and the update to that study are based upon accurate, non-biased information.

Exhibit B

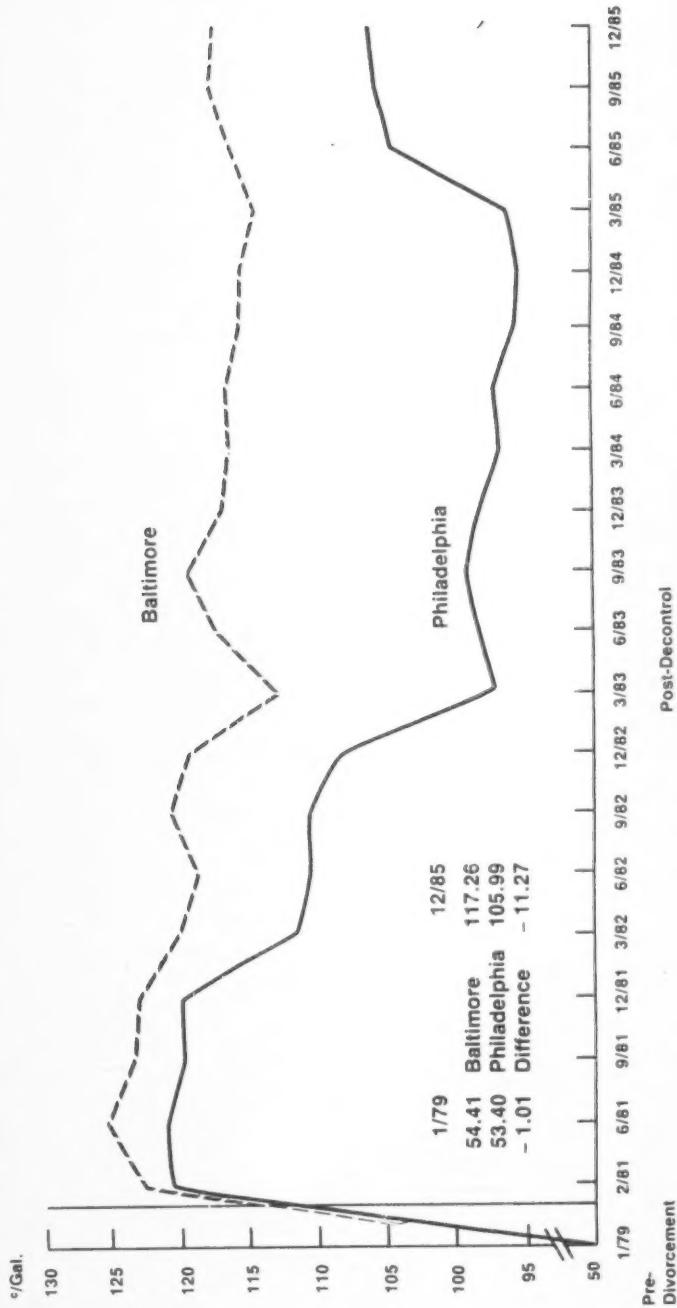
Self Service Leaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro Vs. Philadelphia Metro



Source: Lundberg Price Surveys

Exhibit R

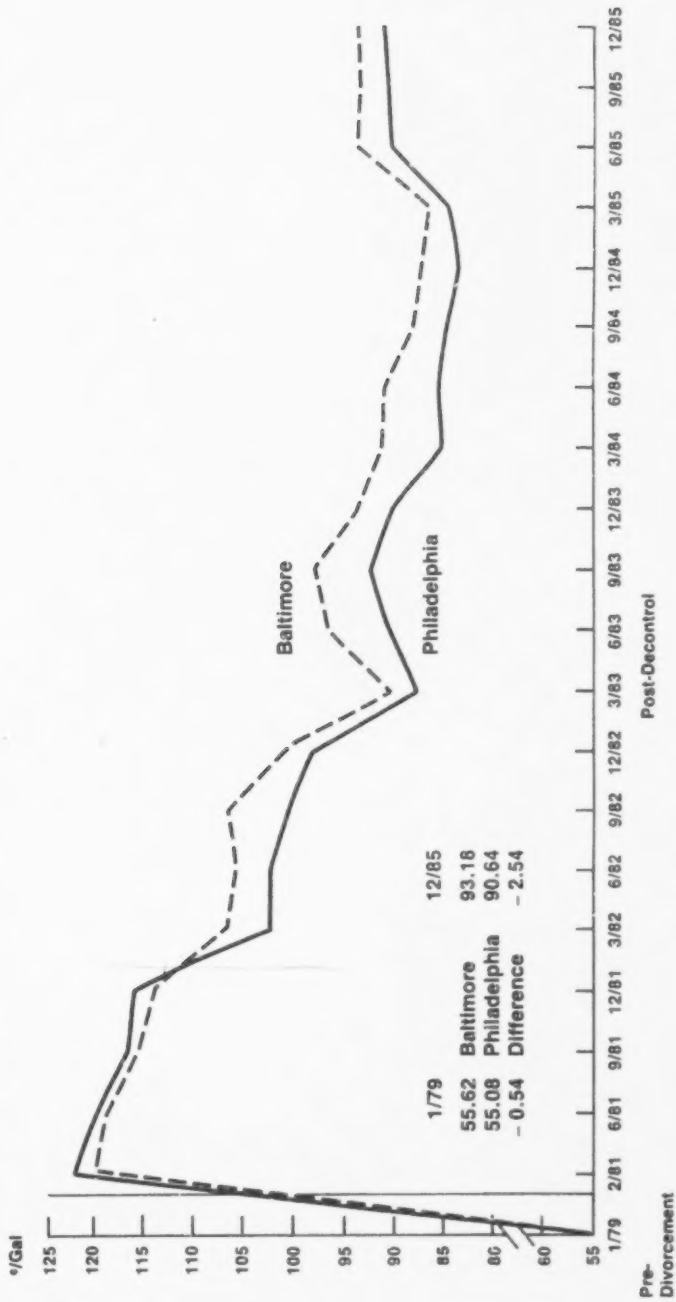
Full Service Leaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro Vs. Philadelphia Metro



Source: Lundberg Price Surveys

Exhibit B

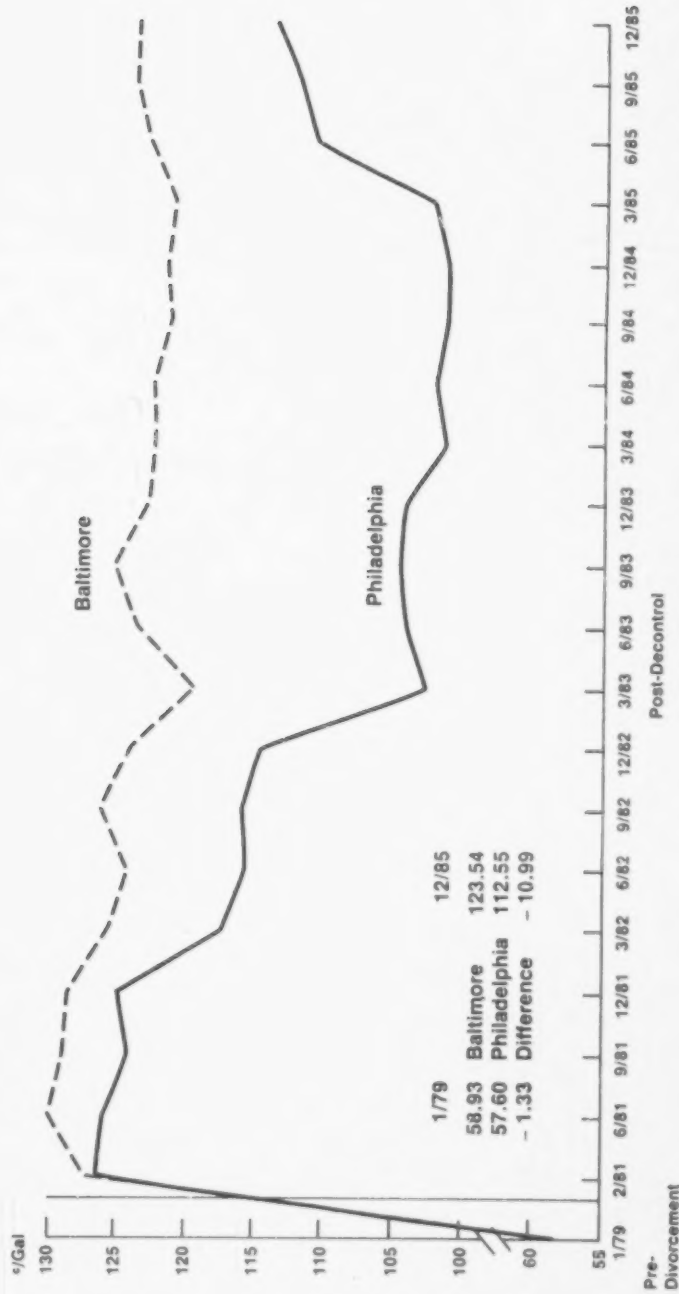
Self Service Unleaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro vs. Philadelphia Metro



Source: Lundberg Price Surveys

Exhibit B

Full Service Unleaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro vs. Philadelphia Metro



Mr. BEDELL. Thank you, Mr. McDonald. Mr. Frank of Marathon Petroleum.

TESTIMONY OF J.L. FRANK, PRESIDENT, MARATHON PETROLEUM CO.

Mr. FRANK. Mr. Bedell, I am J.L. Frank, president of Marathon Petroleum Co., and I appreciate the opportunity to appear before the committee today and express Marathon's opposition to H.R. 3824.

Since my full statement has been filed for the record, I will merely summarize it briefly for you.

Marathon Petroleum Co. engages in the refining, transportation, and marketing of petroleum products. Marathon Petroleum Co. is a wholly owned subsidiary of Marathon Oil Co. which is owned in turn by the United States Steel Corp.

As the Nation's ninth largest domestic refiner, Marathon serves a number of different markets.

Marathon supplies a full line of motor fuels and related products to independent businessmen—dealers, jobbers, and distributors—who resell the products under the Marathon trademark. Collectively they operate 2,360 Marathon branded stations in six Great Lakes States.

Via our network of pipelines and 50 product terminals in the Midwest and the Southeast, Marathon is one of the Nation's largest suppliers to independent petroleum wholesalers and jobbers who resell our gasoline under their own private brands.

Through a subsidiary, Marathon operates 1,360 retail outlets in 17 states under 8 secondary brand names. This ranks us second, we think, among integrated refiner-marketers in the number of units which are company operated.

Marathon, therefore, would be more adversely affected by the divorcement provisions of H.R. 3824 than practically any other company. H.R. 3824 would essentially sever our lifeline.

Starting in the late 1960's, Marathon gradually entered direct retailing and through experience we feel we have gained a tremendous insight into private brand marketing. Primarily through acquisitions we have continued to expand our secondary brand operations to the current size.

While company-operated units have increased, we have also added to our network of Marathon brand dealers and jobbers. The committee may wish to refer to the graph attached to my statement.

Over the past 5 years Marathon has signed on almost 400 new lessee dealers. In addition, with that it added roughly 90 dealers who own their own property and have agreed to market under the Marathon brand. Many of these owner-operators were previously dealers for other refiners who decided to withdraw from the Great Lakes region.

Marathon's marketing growth can be attributed to a fairly simple philosophy—give the customer what they want. It is the consumer who dictates our mode of operation.

Marathon is unique within the industry. We are large, but not large enough to be classified as big oil or a national marketer. But

as a regional marketer we are large enough to serve multiple market segments. I would ask the committee to refer to the pamphlet which accompanies my statement.

Our direct marketing subsidiary purchases products from Marathon at the same prices as any other unbranded wholesale customer. Its mode of operation is almost entirely self-serve. It operates 460 C-stores. Some units even have fast food facilities. It caters to the customer who is interested in lower price and convenience.

On the other hand, there are no company-operated Marathon brand outlets. All are operated by lessee dealers, owner-operators, jobbers, or distributors. Our lessee dealers purchase at a delivered price. The gasoline they buy is improved with a proprietary performance additive package. All Marathon brand marketers benefit from our trademark, credit card, advertising and promotion, training and related services.

These units tend to appeal to customers who are interested in traditional services—someone to pump their gas, wash their windshield, check under the hood and so on. Most have the capability to provide related automotive services such as oil changes and tune-ups and other minor mechanical work. It's obvious that these vastly different modes of operation are designed to serve distinct market segments. One segment is interested in low price, quality and convenience, the other in more traditional automotive services.

H.R. 3824 has been titled the Motor Fuel Sales Competition Improvement Act of 1985, which is certainly a misnomer. Marathon is convinced this legislation would impair, not foster, competition to the detriment of the consumer. It provides preferential treatment to one class of competitors at the expense of another. We see a significant distinction between protecting individual competitors and guarding competition itself.

Proponents of H.R. 3824 complain about rental terms, lease cancellations, forced hours of operation and other marketing practices, but divorcement doesn't address any of these concerns. H.R. 3824 doesn't focus on dealer complaints. It removes competitors from the marketplace. That's what divorcement is all about.

What would be the impact on Marathon if H.R. 3824 were to be enacted? It would totally destroy our approach of servicing a variety of customers through a diverse set of marketing channels. Should divorcement pass, we would have to dispose of 1,360 retail outlets. But the impact on Marathon would be far less dramatic than the impact on almost 10,000 full and part-time employees of our direct marketing subsidiary. Most would lose their jobs and their benefits. When family members are added, it means that within Marathon alone, divorcement could severely harm some 35,000 individuals.

Thus we are convinced that H.R. 3824 would cause unnecessary harm to many for the benefit of a relatively few.

I would like to close with a few thoughts which I would ask you to consider during your deliberations.

Has Marathon committed an offense which warrants the divestment of \$250 million of assets and more than 40 percent of our gasoline sales volume?

Can proponents argue that salaried stations sell gasoline at too low a price and then suggest that prices will go even lower if stations are turned over to them?

And a final thought—with so many germane Federal and State laws already in place, why can't they be used to address dealer concerns with pricing, rents, hours of operation, eviction, and other marketing practices?

In short, is divorcement really necessary? I urge the committee to reject H.R. 3824.

Thank you.

[Mr. Frank's prepared statement follows:]

PREPARED STATEMENT OF J.L. FRANK, PRESIDENT, MARATHON PETROLEUM CO.

I am J. L. Frank, President, Marathon Petroleum Company. I appreciate this opportunity to appear before the Committee and express Marathon's opposition to HR 3824.

Marathon Petroleum Company is the "downstream" subsidiary of Marathon Oil Company. By "downstream," I mean that we engage in the refining, transportation, and marketing of petroleum and petroleum products. Marathon Oil and its family of companies collectively make up a medium-sized, integrated oil company which participates in virtually all aspects of the petroleum business. Since 1982, Marathon has been a wholly-owned subsidiary of U.S. Steel Corporation.

The combined capacity of Marathon's four U.S. refineries rank it as the ninth largest domestic refiner. Through a modern and efficient transportation and distribution system, Marathon serves a number of different petroleum market segments:

- Marathon supplies a full line of motor fuels and related products to independent businessmen -- dealers, jobbers, and distributors -- who resell the products under the Marathon trademark. Collectively they operate 2,360 Marathon-brand stations in six Great Lakes states.
- Via our network of pipelines and 50 product terminals in the Midwest and Southeast, Marathon is one of the nation's largest suppliers to independent petroleum wholesalers and jobbers who resell our gasoline under their private brands.
- Through a subsidiary, Marathon operates 1,360 retail outlets in 17 states under eight secondary brand names. This ranks us second among integrated refiner-marketers in the number of units which are company operated. Marathon, therefore, would be more adversely affected by the divorcement provisions of HR 3824 than practically any other company. HR 3824 would essentially sever our "lifeline."

In total, Marathon's 1985 U.S. gasoline sales slightly exceeded four billion gallons, with total domestic petroleum product sales of approximately 7.2 billion gallons.

Starting in the late-60s, Marathon gradually entered direct retailing through the acquisition of a few highly motivated and successful private brand jobbers who were also our customers. We have learned through experience and, over time, feel we have gained a tremendous insight into private brand marketing. Over the past three years, we have purchased roughly 600 additional private brand outlets. It is primarily through these acquisitions that we have expanded our secondary brand operation to its current size.

While company-operated units have increased, we also have added to our network of Marathon-brand dealers and jobbers. Marathon, like others in the industry, experienced a significant "shakeout" of branded outlets in the mid-70s. However, our outlet count stabilized in the late-70s, and has grown in the 1980s. Over the past five years, Marathon has signed on almost 400 new lessee dealers. In addition, we have added roughly 90 dealers who own their own properties and have agreed to market under the Marathon brand. Many of these owner-operators were previously dealers for other refiners who decided to withdraw from the Great Lakes region.

Marathon's marketing growth can be attributed to a fairly simple philosophy: Give customers what they want. It is the consumer who dictates our mode of operation. Regrettably, HR 3824 would prevent us from responding to consumer preferences.

The market for petroleum products is not monolithic but, in fact, has many market segments. Within the geographic constraints of our transportation and distribution system, Marathon attempts to serve all of these segments: through Marathon-brand lessee dealers and owner-operators, through branded Marathon jobbers and distributors, through wholesale sales to unbranded marketers, through direct sales to end-users and commercial accounts, and through company-operated retail outlets. No one marketing approach, no one mode of operation, can meet the needs of all customers. Again, our objective is to give all types of customers what they want.

Marathon is unique within the industry. We are large, but not large enough to be classified as "Big Oil" or a national marketer. But, as a regional marketer, we are large enough to serve multiple market segments.

Our direct-marketing subsidiary purchases products from Marathon at the same prices as any other unbranded wholesale customer. Its mode of operation is almost entirely self-serve. It operates 460 C-stores; some units even have fast food facilities. It caters to the customer who is interested in lower price and convenience.

On the other hand, there are no company-operated Marathon-brand outlets. All are operated by lessee dealers, owner-operators, jobbers, or distributors. Our lessee dealers purchase at a delivered price. The gasoline they buy is further improved with a proprietary performance additive package. All Marathon-brand marketers benefit from our trademark,

credit card, advertising and promotions, training and related services. These units tend to appeal to customers who are interested in traditional services: someone to pump their gas, wash the windshield, check under the hood, and so on. Most have the capability to provide related automotive services such as oil changes, tune-ups, etc.

It is obvious that these vastly different modes of operation are designed to serve distinct market segments. One segment is interested in low price and convenience, the other in more traditional automotive services.

Most of my career has been spent in petroleum exploration and production. However, in my brief tenure as president of Marathon Petroleum Company, I have found petroleum marketing to be dynamic, challenging, and very, very competitive. With America's 150 million motorists having a choice of over 200,000 gasoline outlets, the ability to read and react to customer preferences is critical. In today's turbulent marketplace, innovation and efficiency are not just slogans, they are necessities. Perversely, HR 3824 would inhibit innovation and reduce operating efficiencies.

HR 3824 has been titled the "Motor Fuel Sales Competition Improvement Act of 1985," which is certainly a misnomer. Marathon is convinced that HR 3824 would impair -- not foster -- competition. As a result, gasoline prices would inevitably rise. HR 3824 provides preferential treatment to one class of competitors at the expense of another -- and that does not improve competition. There is a big difference between protecting individual competitors, and guarding competition itself.

The gasoline marketplace, like any other, has its imperfections. It is inevitable that among 125 refiners, thousands of jobbers and wholesalers, and tens of thousands of dealers, a few instances of business practices will occur which cause strained relationships between dealers and suppliers. We cannot deny that they exist, but they are minimal, and current antitrust laws and the Federal Petroleum Marketing Practices Act provide adequate remedies.

Proponents of HR 3824 complain about rental terms, lease cancellations, forced hours of operation and product prices. But divorcement doesn't address any of these concerns! HR 3824 doesn't focus on dealer complaints, it removes competitors from the marketplace. That's what divorcement is all about.

Definitive numbers in the field of petroleum marketing are difficult to come by. One frequently quoted source is the Lundberg Letter. The July 6, 1984, issue of Lundberg Letter indicates that 16 large oil companies direct operated a total of just over 7,000 retail outlets. That represented a mere 3.3% of the total service station population (210,875). Notably, "Big Oil" -- the largest seven oil companies -- operated no more than 2,500 to 2,600 units. Lundberg estimated the total number of refiner-operated outlets to be just under 16,000. This means that more than 80% of divorcement's impact will be borne by medium to small refiners.

What would be the impact on Marathon if HR 3824 were to be enacted? It would totally destroy our approach of servicing a variety of customers

through a diverse set of marketing channels. Marathon has a net capital investment of almost a quarter of a billion dollars in our direct-marketing subsidiary. Should divorcement pass, we would have to dispose of 1,360 retail outlets. Some could be leased, though not many, since they do not lend themselves to a traditional lessee-dealer-type operation. Some could be sold, but our prospects of receiving a fair return in the "fire sale" atmosphere that would follow divorcement would be dim. Many would sit idle until, eventually, they would be permanently closed.

But the impact on Marathon would be far less traumatic than the impact on the almost 10,000 full- and part-time employees of our direct-marketing subsidiary. Most would lose their jobs and their benefits. When family members are added, it means that within Marathon alone, divorcement would severely harm some 35,000 individuals. If all refiner-operated outlets are considered, over 300,000 people would be affected. Thus, we are convinced that HR 3824 would cause unnecessary harm to many for the benefit of a relative few.

Allow me to summarize by stating quite directly that, if divorcement becomes federal law, it will not cure the alleged ailments of dealers. It must be evident that the elimination of some refiner-suppliers and some low-price marketers will not promote competition. Divorcement blatantly aims to protect a special class of marketers at the expense of other competitors and of competition itself.

I'd like to close with a few thoughts which I would ask you to consider during your deliberations.

- Has Marathon committed an offense which warrants the divestment of \$250 million of assets and more than 40% of our gasoline sales?
- Can proponents argue that salaried stations sell gasoline at too low a price, and then suggest that prices will go even lower if the stations are turned over to them?
- Can proponents continue to claim that refiners are taking over their stations, when statistics show that the number of refiner-operated outlets has remained stable?

And a final question: With so many germane federal and state laws already in place, why can't they be used to address dealer concerns with pricing, rents, hours of operation, eviction and other marketing practices? In short, is divorcement really necessary?

I urge the Committee to reject HR 3824.

Thank you.

Mr. BEDELL. Thank you. Mr. Daskal, Service Station Dealers of America.

TESTIMONY OF JIM DASKAL, STAFF COUNSEL, SERVICE STATION DEALERS OF AMERICA, INC.

Mr. DASKAL. Thank you, Mr. Chairman. My name is Jim Daskal. I am counsel to the Service Station Dealers of America, Inc.

I have prepared a very extensive written statement, so I will try to summarize in the 5 minutes that I have.

One of the more frequent contentions that has been raised and has been raised again on the panel that I am sitting on right now is that existing law is adequate to protect service station dealers against what they may perceive to be the unfair trade practices of refiner direct operations competing with them.

There are several reasons why this is not so. What we have done in our testimony is prepared a hypothetical suit that would be brought by a service station hypothetically competing against a refiner company-operated station of its own brand.

To be brief, the Robinson-Patman Act would be inapplicable for two reasons. First, that the sale to the company-operated station would be an intercorporate transfer and not a sale as required by Robinson-Patman.

Second, the requirement of Robinson-Patman is that the second sale be in commercial or cross-State lines. Case law seems to be very clear that even if you could overcome the intercorporate transfer obstacle, the in-commerce obstacle would still be there.

Under section 1 of the Sherman Act, with the 1984 Supreme Court decision in *Copperweld v. Independence*, a wholly owned subsidiary and its parent are incapable of conspiring under section 1 of the Sherman Act. Section 1 prohibits contract compilations and conspiracies in restraint of trade, and we in the antitrust bar say it takes two to tango. The problem is that the subsidiary such as the one Marathon referred to earlier is not a separate economic entity for Sherman Act purposes which leaves us with section 2 which prohibits attempted monopolization.

The problem with section 2 is that the relevant market would not be defined under the way the administration's antitrust guidelines in particular have caused the law to evolve. The relevant market would consist not of just the intrabrand problems that dealers complain of but rather of the entire interbrand market, and consequently, you would not have sufficient market power to sustain a section 2 count.

Third, the last thing that has been alluded to is PMPA. Doesn't PMPA provide dealers with protection against termination or non-renewal?

We can go on and on and on about the problems that have developed with the Petroleum Marketing Practices Act since its enactment in 1978. I would simply state, and I would like to make a submission for the record, that the legal commentary which has reviewed PMPA was unanimous in stating that the law has not been interpreted in accordance with the original congressional intent.

The primary fault in PMPA is that changes to a contract at the time a dealer's franchise agreement is brought up for renewal

needs only be in good faith. The way that good faith has been interpreted is that simply if a refiner policy or any franchise or policy is uniform, it will withstand a judicial scrutiny. This provision is, has become, been known among our attorneys as the so-called equal shaft rule. It doesn't matter how bad the term is. If it's uniform, it will stand up.

The second thing I wanted to address was with regard to some of the economic effects of the divorcement legislation. Earlier Mr. Umbeck made his presentation and stated that retail margins were not an accurate tool for predicting what the effects of the divorcement would be.

Now what the Service Station Dealers of America did in looking at the Maryland market was they attempted to take retail margins and retail prices in Baltimore compared to other cities starting with January 1982. The reason that date was selected was so that we would have decontrol and that the divorcement in Maryland would be complete.

Now what we found was interesting. In January 1981-1982 rather—the dealers had the lowest margins in the Nation on the two most popular grades of gasoline which were regular unleaded self-serve and regular leaded self-serve. Now all of a sudden we are being told today that margins don't have anything to do with the predicting the impact of divorcement, yet the last time this committee took up the bill in 1981 you will recall that the American Petroleum Institute produced a Dr. Sorensen from Florida State University who came in here with the study saying that retail margins and prices rose faster in Baltimore as opposed to the rest of the country based on Lundberg Letter data collected from 1980-81.

Now the last time the committee took up this hearing, this information was valid. We took essentially the same approach and updated it, and all of a sudden it shows something entirely different and all of a sudden it doesn't matter. We think that's a little bit—it is inconsistent to say the least.

The second thing I wanted to address was the issue of shorter service hours being available to consumers as a result of divorcement legislation.

As I mentioned, PMPA is absolutely, the law under PMPA is clear that the refiner has the right to set the hours of operation, but the franchisor has the power to set the hours of operation at the station. Mr. Umbeck has stated that his data simply shows that at the divorced stations the dealers at those stations reduced the hours of operation.

That may be true. I can't say, but what I am saying is that any implication that on a national level enactment of H.R. 3824 would enable service stations, the new dealers taking over the divorced station to lower hours of operation is just flatly wrong as a matter of law under the PMPA.

I also wanted to discuss another issue that has been brought up which is the issue of whether or not evidence exists of predatory pricing, upstream subsidization, downstream profits and so on, so forth. One of the questions that has not been answered is how are we defining predatory pricing? How are we defining subsidization?

As an antitrust lawyer I see many different definitions of predatory pricing. I see many different definitions of subsidization. One

of the tenets of economic theory on subsidization is that the alleged subsidizer have monopoly power in the upstream market with which he obtains these profits to subsidize with.

Now if you look at the entire interbrand industry, it is clear that no individual oil company would have this sort of market power to engage in a subsidization campaign for academic purposes if you will, but if you look at the microeconomic approach relative to its dealers, you know, the oil company would be the entire market, so what we are really talking about is looking at interbrand, theories applicable to interbrand competition to deal with what we see as predominantly an intrabrand problem.

I also wanted to briefly address the open supply issue. One of the things that is brought up is the issue of trademark violations. As Mr. Montague stated earlier, they were dealt with in the *Bogosian* issue in terms of commingling, any dealer who commingles gasoline, so even under the existing terms of *Bogosian*, he is subject to immediate termination under PMPA. In fact, the case law under PMPA states that commingling is such an onerous offense that the dealer can be immediately terminated without the 90-day notice that PMPA usually affords.

With regard to the underground tank issue, the way that—having just completed a rather massive study of tank leak liability, I can assure my friends on the panel that we, as well as the dealers, as well as refiners or jobbers or anyone else, would probably be strictly liable for anything that happens to the tank, and if some of the other, some of the more environmentally allied people in Congress had their way, we would be stuck in Super Fund, but in any event, I did want to say that the problems raised with open supply are, you know, are theoretical problems that I don't think would exist in the real world, and the main reason is when a dealer puts up the Exxon flag or the Arco flag or the Marathon flag, of course he wants to fly the flag of that major refiner and be a proud representative of that company.

Our guys aren't looking to go out and buy X, Y, Z gasoline and pass it off to the consumer as branded product or anything else. What they are seeking is some leverage or bargaining power; H.R. 3824 doesn't say that you must go out and buy other brands of gasoline, but it does give you the right to go out and do so if you want to do so.

I wanted to talk very briefly about what happened recently, and it is attached as an exhibit to Mr. Rasheed's testimony—when crude prices fell, the traditional spread between the dealer, direct buying dealer, and the jobber and the SIGMA member, the spread increase slid from the traditional about 4 cents a gallon spread to over 20 cents a gallon, some 30 and 40 cents a gallon. Our office was deluged with calls saying what can I do about this under existing law?

One of the things that people thought they would do is go out and buy the identical gasoline from a jobber. In the Southeast—I won't mention the company but it is in the exhibit—it's none of the gentlemen at the table, but they went out, the dealers tried to go out and buy the identical gasoline for 15 cents a gallon cheaper than it was being sold to them as a direct supply dealer.

Now the reaction of this was not to, not to pat the dealer on the back or saying hey, you're going out and getting a lower price, you're going to pass it on to the consumer. Instead we got a letter saying that the jobber would be tortiously interfering with the direct, with the supply contract between the direct dealer and refiner and we would both be terminated.

This is the sort of situation, you know, that we hope that the open supply provision would address, not so much that the guys want to go out and start denigrating the value of their brand. It has value to the dealer, but at the same time, too, he does need some sort of leverage in that sort of situation, and I think that summarizes my remarks.

[Mr. Daskal's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF JIM DASKAL, STAFF COUNSEL, SERVICE STATION DEALERS OF AMERICA, INC.

Mr. Chairman, members of the Committee:

My name is Jim Daskal, I am an attorney representing the Service Station Dealers of America. I am also a native of Baltimore, Maryland and make my home there; therefore, I am also a Maryland consumer.

The purpose of my testimony is to answer some of the criticisms of the bill, and in particular, to dispel some of the mythology and apocalyptic predictions advanced by the opponents of this legislation.

It is important to understand that we are dealing solely with the situation where a dealer is competing with a company operated station of the same brand. If an Exxon dealer cannot compete with an Arco dealer, so be it. It is quite another matter when an Exxon dealer must compete with a station operated by Exxon.

One of the more pernicious claims made by opponents of this legislation is that existing law is adequate to deal with problems faced by dealers who must compete head to head with their supplier/landlord/franchisor.

For example, let us take a situation where a dealer-operated station of brand X faces a refiner-operated station also of brand X. The refiner-operated station is selling to the public at 80 cents per gallon, whereas the dealer tankwagon price is 81 cents per gallon. In light of the overt price discrimination, and faced with refiner imposed costs such as rent, credit card fees etc., and being unable to negotiate any relief from his supplier, the dealer files a lawsuit alleging violations of the Petroleum Marketing Practices Act, the Robinson-Patman Act and the Sherman Act. These are the existing laws which allegedly give dealers all the protection they need.

The result of the hypothetical lawsuit will demonstrate why this is not so.

I. REMEDIES FOR DEALERS UNDER EXISTING LAW

A. The Petroleum Marketing Practices Act

The Petroleum Marketing Practices Act governs the terms of termination or non renewal of a franchise relationship between refiners, jobbers, and dealers.

Although well intended, PMPA has been interpreted by the courts contrary to legislative intent, to the detriment of its intended beneficiaries. As a result the scholarly commentary on PMPA is unanimous in stating that the law does not work as Congress intended, and that it provides little protection for a dealer against a threat of termination or non-renewal. See, e.g., "Judicial Interpretation of the Petroleum Marketing Practices Act" 32 Emory Law Journal 273 (1983).

Most importantly, PMPA does not address at all the economic eviction techniques affecting dealers such as in our hypothetical example. Franchisors are free to impose any terms they desire, including massive rent hikes, credit card fees, unbounded indemnity clauses, etc.

The fundamental problem with PMPA is that when a franchise comes up for renewal, changes to that franchise need only be imposed "in good faith". In practice, this standard has devolved to a point where any change to a franchise, even if it will have the effect of running the dealer out of business, will be approved if applied to all dealers. We refer to this as "the equal shaft rule". The severity of the problem is made clear by the position taken by several refiners in PMPA cases that PMPA imposes no duty to negotiate with a franchise; and that these agreements can be made on a take it or leave it basis. This is an odd result for a remedial statute whose

explicitly stated purpose is to "equalize the bargaining power between franchisors and franchisees.

An example of the utter disregard for PMPA and consumer interests held by some refiners is the letter attached as exhibit 1. A Nashville, Tennessee Gulf dealer wished to buy his station pursuant to PMPA. PMPA requires that the franchisor's offer to the dealer be bona fide. According to Gulf's vice president of marketing, a bona fide offer would include a restriction against selling gasoline from those premises for ten years? If the PMPA were working, refiners would not be able to foist such outrageous practices onto dealers.

In conclusion, Pmpa would be totally inapplicable to the situation in our hypothetical, and overall gives dealers very little protection.

A. Robinson-Patman Act (Section 7 of the Clayton Act)

In order to show a violation of the Robinson-Patman Act, the dealer must show: (a) two sales; (b) in interstate commerce; (c) a discrimination in price; (d) between different purchasers; (e) of goods or commodities of like grade and quality.

The dealer's suit on this basis will be thrown out of court on the jurisdictional issue of whether there were two sales. Moreover, even if there were two sales, it is extremely doubtful that the dealer could satisfy the interstate commerce requirement.

1. The Two Sales Requirement

The reason that the dealer will not be able to establish jurisdiction for his Robinson-Patman claim is because the transfer of gasoline from the refiner to its wholly owned subsidiary is an intracorporate transfer, not a sale.

As stated in Security Tire & Rubber Co. v. Gates Rubber Co., 598 F.2d 962 (5th Cir. 1979):

"Transfers from a parent corporation to its wholly-owned subsidiary corporation are transfers within the same economic unit. These transfers are the economic equivalent of intra-company transfers of goods. As such, these transfers cannot be considered sales for Robinson-Patman purposes. See generally authorities

cited in note 1, supra. See also generally Von Kalinowski, Antitrust Laws & Trade Regulation Sec. 24.-03[2] (1975). * Gates, at 966.

Existing case law has repeatedly thrown out Robinson-Patman suits by dealers and jobbers on this jurisdictional basis and thus the merits of the claim are never reached. For example, in O'Byrne v. Checker Oil 727 F.2d 159 (7th Cir. 1984), the Court stated (supplier) "of course did not sell to its company-owned stations" allegedly receiving discriminatory price." See, e.g. Parrish v. Cox 586 F.2d 9, 12 (6th Cir. 1978), Shavroch v. Clark Oil and Refining 726 F.2d 291, 295 (6th Cir. 1984).

In short, The Robinson-Patman Act is simply not equipped to deal with dual distribution (supplier competing with his customer for retail sales at all.) See, "The Dual Distribution Loophole to Robinson-Patman 48 Antitrust L. Journal 1802 .

Over the years, several suggestions have been made to close the dual distribution loophole to the Robinson-Patman Act. One approach would be to extend Robinson-Patman price discrimination prohibitions to internal transactions by integrated suppliers [HR 9195, 88th Congress, 1st Session (1963); S.1842, 89th Congress, 1st Session (1965)], a second would have required companies engaged in dual distribution to report annual operating data [HR 3559, 88th Congress, 1st Session (1963); S.1843, 89th Congress, 1st Session (1965)], a third bill would have required integrated distributors to maintain a fair and adequate

differential between the prices charged as a supplier to independent purchasers and the prices charged as a competitor of such purchasers. [S.1844, 89th Congress, 1st Session (1965)].

The most important proposal aimed at closing the Robinson-Patman dual distribution loophole was to subject intracorporate transfers to the Act's prohibitions.

Both the FTC and the Department of Justice believed that this approach was unworkable.

At 1966 Senate hearings on these bills, the Department of Justice explained that when the buyer and seller were part of the same organization, the "price" at which the selling arm of a company sells to the buying part is merely an accounting figure which could be manipulated at will; thus, the statute could be totally ineffective to protect independent customers from discrimination or prevent predatory pricing.

The FTC testified that prohibiting price discrimination would not eliminate the danger of a price squeeze, but would merely force the integrated supplier to take its profit at the production or fabrication level, and thus encourage more vertical integration.

Even if the dual distribution loophole could be closed in a way to make Robinson-Patman workable, a second jurisdictional hurdle that would be faced by our dealer is the requirement that one of the sales be made "in interstate commerce".

2. In Interstate Commerce

Under the Sherman Act and other Federal statutes, the requirement for jurisdiction is that the transaction affect interstate commerce.

Because of the difference in wording, the Supreme Court held in Gulf Oil Corp. v. Kopp Paving Co., 419 US 186, 95 S.Ct. 392, that at least one of the sales in a Robinson-Patman be in interstate commerce or across state lines.

In those states having refineries, it is doubtful that a retailer could invoke the proscriptions of the Robinson-Patman Act against an encroaching refinery. In those cases, courts have held that the refiner's sales to stations located within the refinery state are not "in commerce" as required by Section 2(a) of the Robinson-Patman Act. See Standard Oil Co. v. Federal Trade Commission, 340 U.S. 231 at 240 (1951) and Borden Co. v. Federal Trade Commission, 339 F.2d 953 (7th Cir. 1964).

Additionally, certain courts have held that the transport of crude oil from one state to the next breaks the chain of interstate commerce and that subsequent sales of refined gasoline made from the point of transfer are not within "the flow of interstate commerce." See Balliston v. Texaco, Inc., 455 F.2d 175 (10th Cir. 1972).

In finding that no interstate commerce was involved in Belliston, the Court relied upon the decision of the District court in Myers v. Shell Oil Co., 96 F. Supp. 670 (S.D. Cal. 1991), in which the Court held:

"...that the Robinson-Patman Act did not

apply to Shell with respect to gasoline it refined from crude oil which Shell itself had imported across state lines into California where alleged discriminatory sales occurred."

In Belliston, the Tenth Circuit stated:

"The lower court held that crude oil and gasoline are the same, i.e., petroleum products. This determination is requisite for jurisdiction under the 'flow of commerce theory' because only the crude oil crossed the Utah state line. The lower court erred in this conclusion." Belliston at 179-80.

"...The production of gasoline from crude oil is a highly complex process requiring expensive, precision equipment and skilled technicians. We therefore conclude that when crude oil is refined into gasoline, the character of these products is so changed that they cannot be equated as the 'same stuff to satisfy the requirements of the 'flow of commerce' theory." at 180.

See also Mowrey v. Standard Oil Co. of Ohio, 463 F. Supp. 762 (W.D. Ohio 1976) 773-75; Mcgoffin v. Sun Oil Co., 539 F.2d 1245 (10th Cir. 1976); Roorda v. American Oil Co., 446 F. Supp. 939 (W.D. N.Y. 1978) at 941-46.

In short, the dealer will not be able to satisfy the in commerce requirement of Robinson-Patman in refinery states, and it is doubtful if the requirement can be met in non-refinery states.

Thus, once again jurisdictional problems will prevent the dealer's Robinson-Patman chain from even being heard, and further demonstrate why Robinson-Patman amendments will not solve dealer problems.

B. Sherman Act, Section 1

Section 1 of the Sherman Act prohibits contracts, combinations and conspiracies in restraint of trade. The threshold jurisdictional requirement our dealers must meet is that he establish a plurality of actors acting in restraint of trade, i.e. "it takes two to tango."

When the Small Business Committee last held hearings on Divorcement in 1981, it was arguable that a dealer had a theoretical (but not practical) cause of action under Section 1 against the refiner and the company-operated station.

In 1984, the Supreme Court changed this with its decision in Copperweld Corp. v. Independence Tubing Corp. 105 S.Ct. 319 (1984).

In Copperweld, the Supreme Court held that a wholly owned subsidiary is incapable, as a matter of law, of conspiring with its parent for purposes of Section 1 of the Sherman Act. This decision put an end to the "intra-enterprise conspiracy" doctrine by which it may have been possible to reach anticompetitive conduct affecting our dealer.

It is important to note that many refiners argue that their company-operated stations are operated by a subsidiary, which operates on the same terms as dealers. Arco, for example, repeatedly says that its company-operated stations are operated by its subsidiary, Prestige Stores.

The Copperweld case makes clear that Arco and Prestige or for that matter any refiner and its company-operated locations are considered a single economic entity, and for that reason, they are incapable of being Sherman Act conspirators, and that a "sale" between them is an intracorporate transfer not subject

to Robinson-Patman as discussed, supra.

Thus, the dealer's claim under Section 1 of the Sherman Act would also be dismissed, not on its merits, but because of jurisdictional roadblocks.

C. Sherman Act, Section 2

Section 2 of the Sherman Act generally deals with (a) unilateral conduct (conduct of a single firm); (b) which either monopolizes or attempts to monopolize with a dangerous probability of success; (c) a relevant market, which consists of a product market and a geographic market.

The reason Section 2 would not be applicable is because the product market would probably be held to consist of all gasoline sold in the geographic marketing area.

In our case, let us assume that refiner X has a 20% marketing share in the given geographic area, and decided to eliminate all of its dealers and turn them into company-operations. The 20% market share would not be high enough to support a finding of market power necessary to sustain a Section 2 violation.

It should be noted, that the recent wave of mergers and market area withdrawals have produced areas where concentration levels may be high enough to sustain Section 2 counts; however, Section 2 will generally be unavailable to our dealer, particularly in light of the new Justice Department Vertical Antitrust Guidelines.

1. Effect of the Guidelines and the "New Antitrust"

On January 23, 1985, the Department of Justice issued a

very controversial document, its "Vertical Restraints Guidelines." Consumer and retail groups throughout the country were stunned by the contents of this "portable amicus brief."

Congress reacted to this by passing a resolution stating that the guidelines did not accurately state existing law should not be considered by the courts as binding or even persuasive, and should be withdrawn. Even after President Reagan signed the resolution, Assistant Attorney General Douglas Ginsberg publically refused to withdraw the guidelines and stood by their accuracy. 50 Antitrust and Trade Regulation Reporter 56, 58. The guidelines thus remain in the field, and influence our dealers case.

The basic structure of the guidelines are:

- a. intrabrand competitive problems are of little or no consequence,
- b. dual distribution problems will be treated as vertical restraints.
- c. vertical restraints should always be treated under the Rule of Reason as opposed to being per se illegal (i.e. evaluated for reasonableness as opposed to automatic illegality),
- d. For a vertical restraint to be attacked, it must pass through a series of market screens, which would effectively preclude a dealer's case from ever being heard.

In short, under these guidelines, conversion of dealer

operations to company operations would pose no antitrust problems. SSDA and many antitrust scholars dispute the contention that intrabrand competition is rarely meaningful.

Our most important point is this: We believe it is wrong for the agencies to contend that existing law is adequate to protect dealers on the one hand, while working to reduce those protections on the other.

Apart from the Guidelines, the most important demonstration of this is the Department of Justice attempt to file an amicus brief in the Monsanto v. Spray Rite case urging the Supreme Court to renounce the rule of automatic illegality in vertical price fixing cases (i.e. where a manufacturer sets the resale prices of its distributors and retailers).

Much of the impetus for the antitrust reform effort stems from Judge Robert Bork's seminal book, "The Antitrust Paradox."

In the book, Bork argues that a line of Supreme Court cases has destroyed the ability of oil companies to set prices at their service stations and thus deprived consumers of certain "efficiencies". (See attachment)

We do not believe that allowing major refiners to control retail prices is in the public's best interest.

D. Conclusion

We believe that any contention that existing laws are adequate to protect service station dealers is meritless.

Even if causes of actions were theoretically available, as a practical matter they generally are not, due to overwhelming resources of the refiners.

A refiner faced with a dealer lawsuit need not win the case. The dealer can be economically precluded from winning the case because of legal fees and ancillary litigation costs including court reporter fees, rental of rooms for depositions etc.

Congress explicitly recognized this fact in PMPA by easing the standards for granting of preliminary injunctions and by shifting the burden of proof to the franchisor upon showing of termination or non-renewal.

As stated by Bill Demarest, Counsel to the Energy and Power Subcommittee, (which authored PMPA):

"an individual dealer served by either Shell or Exxon is at a tremendous disparity with respect to his ability to litigate issues of franchise termination or non-renewal, when confronted with the type of litigation staff you (major oil company) can afford to finance."

Thus, even if dealers could avoid jurisdictional issues and reach the merits of their complaints under existing laws, as a practical matter, litigation costs would make the remedies unavailable.

II. Insulating Dealers From Competition

One of the most frequent charges levelled by divorcement opponents is that dealers seek to insulate themselves from competition.

Dealers fear no competition other than that which they are

helpless against: that of their own refiner supplier. In its study, DOE levels these charges, yet states:

"Most significantly, the protection of lessee dealers is temporary, at best. other types of marketers still can enter the industry. Jobbers often enter to replace company store operations, providing intense price competition. Their entry makes lessee dealers no better off than before divorcement. Unbranded marketers can enter offering low prices, so that lessee dealers are no better off. Finally, competition among brands will remain intense so that any potential monopoly profits garnered by lessee dealers after divorcement eventually will be competed away.

1984 DOE Draft Study at 130

DOE statements prove the exact opposite of what it says about divorcement. Dealers are fully aware that divorcement will not reduce competition, nor insulate them from price competitive marketers because it is not intended to.

Moreover, DOE's conclusions directly contradict the apocalyptic predictions of higher consumer prices.

III. Consumer Prices and Economic Efficiency

The most common charge levelled against this legislation is that consumer prices will rise, as dealers insulated from competition raise profit margins to non-competitive levels. An analysis of dealer margins in Maryland after decontrol and after full implementation of divorcement reveal that Maryland dealers consistently have one of the lowest markups in the country.

With regard to economic efficiency, it must be remembered that the vast majority of a dealer's costs are imposed by his supplier. Product cost, rent, hours of operation are all set by

by the refiner. The most efficient dealer in the world will not be able to compete if his supplier/competitor does not want him to. Refiners often argue that they have no reason not to want their dealers to be competitive, yet their recent actions are inconsistent with their rhetoric.

When crude oil prices began their dramatic decline, price cuts were slow to be passed on to dealers. On the other hand, jobbers and unbranded marketers were able to buy the identical product up to 40 per gallon cheaper. When dealers attempted to purchase this identical product from wholesalers 15-20 cents per gallon cheaper than it was available directly from the refiner/manufacturer, the latter responded by threatening both the dealers and the jobbers with termination.

To those who state "we would never do anything to hurt our dealers, we would simply ask "then why do you persist in these actions?". One factor is the desire to maintain complete control over branded marketing. Second, new economic rents have been designed that guarantee a given rate of return on service station properties based on the highest and best use of the property. For example, if a dealer is operating on a property that would have its best use as a fast food restaurant, valued at 100,000 dollars per year in that use, and the franchisor wants a 10% rate of return, the rent will be 10,000 dollars per year. The net economic effect of these rents is to insulate the oil company from the competitive problems faced by its dealers.

In any event, the higher consumer prices and efficiency myths are addressed in our "Facts and Myths" paper attached.

RETAIL GASOLINE DIVORCEMENT - FACTS AND MYTHS

In an effort to preserve competition and retain some local control over the retail gasoline marketplace, several states have passed divorcement legislation, which prohibits oil refiners from operating gasoline stations with salaried personnel, subject to their control.

Divorcement requires only that the operator of a gasoline station be an independent dealer, who as a local small businessman, will be free to offer services and prices to meet local consumer demand.

Divorcement does not require oil companies to sell off service station properties and does not adversely affect refinery or station employment. Nor does it adversely affect consumer prices. It does, however, substantially increase competition in the retail marketplace.

This is because it breaks the oil companies' chain of control over prices from the wellhead, where the crude is recovered, through the refineries to the consumer's gas tank.

Competition is intensified in a divorcement state by having hundreds of small businessmen heavily competing in the marketplace. In contrast, in situations where company-operations control retail prices, this inevitably leads to price-fixing to guarantee margins of profit and eliminate competition. This is typified by the Phillips v. Crown case in Baltimore in 1979, where 10 oil companies were found guilty of a conspiracy to set retail prices in their stations.

In their effort to maintain total control over the marketing of gasoline, oil companies have spread a number of myths about divorcement legislation. They consistently try to portray retail divorcement as anti-consumer and posture themselves as the consumer's best friend. Although committees of the U.S. Congress and state governments have found that divorcement does not adversely affect consumer prices, the oil companies have hired economists such as Philip Sorenson (Florida State University - American Petroleum Institute) and John Umbeck (Arco) to produce studies to prove that prices in Maryland, (the leading divorcement state) and dealer profit margins, are abnormally high because of divorcement.

To date, service station dealers have lacked the money and technical staff to effectively counteract these econometric "hot pieces"; however, it should be pointed out that state governments and the Congress, which do have such facilities, have reviewed these works and have not found them persuasive.

Nevertheless, a number of smoke screens have been set up which divert legislative attention from the real issue, preserving competition and local control over the retail gasoline marketplace. Let's look at some of this mythology.

Myth No. 1 - There is a high degree of competition in gasoline retail marketing. (If it ain't broke, why fix it?)

What we have in the gasoline retail marketplace today, is a very peculiar form of competition. More and more, we see major integrated refiners moving into the direct operation of retail

outlets. We also see an increase in the direct servicing of commercial and wholesale accounts. In effect, the suppliers are competing head-to-head with those they supply.

There is no other industry where one competitor directly controls all of the factors that are vital to the other competitor's success or failure. Yet, in the gasoline marketing business, the refiner controls the lease and the rental on the dealer's property, the amount of product the dealer or distributor gets, the price the marketer pays for his product, the terms and conditions of credit both wholesale and retail, and much more. These factors all are controlled, unilaterally by the refiner and can be manipulated in such a way that the term "competition" takes on a whole new meaning.

Here's a quick example of how arbitrary the oil company can be. At hearings in December, 1982 the U.S. House Small Business Committee heard complaints that ARCO had established a system of pricing zones so that different dealers in the same area were being charged different prices for the same load of gasoline. ARCO's vice president for marketing, George Babikian, later explained that his company had 800 different pricing zones, that the location of those zones is a secret, and that the borders of the zones are changed frequently.

Myth No. 2 - Divorcement legislation would lessen competition by removing refiner-run, high-volume outlets.

There is nothing inherent in high-volume, gas-and-go outlets that requires they be company-run. The president of Amoco testified before the House Small Business Committee in 1981 and stated

that his company has established a very successful network of dealer-run, super pumpers in the Midwest. Maryland, which has had a divorce law on the books since 1974, has a number of high-volume, self-serve stations.

Actually, the true threat to competition comes from the shrinkage in the number of independent marketers and the constraints placed on them by the major oil companies. How can anyone honestly say it is less competitive to have thousands of independent businessmen selling gasoline than it is to allow a handful of oil companies to gain control of the entire marketplace?

The econometric studies which attack divorce are based on assumptions that refiner-ops are more "efficient" than dealer operated stations. This myth comes from a combination of federal controls and the oil companies themselves.

Company-operated, high-volume, self-serve outlets that have been built in recent years are the reasons for the efficiency claim. The facts are simply that due to Federal allocation regulations, and oil company desire to maintain control, dealers have not had the opportunity to run such locations.

In its 1981 report required by the Petroleum Marketing Practices Act, the Department of Energy stated:

"To the extent that the economics of gasoline marketing have changed from low-volume outlets to higher volume outlets, dealers are put in a precarious economic position. They do not have the opportunity to demonstrate they can effectively manage higher volume outlets.

The refiner is limited in adding volume to an existing outlet because of the allocation regulations Under existing regulations, refiners could put a dealer in a new high-volume. However, if the refiner wants the flexibility in the future of closing such an outlet or shifting some of the outlet allocation to another location, it may be effectively foreclosed from this option by installing a dealer instead of a company employee". (DOE Title III Report at p. 232.)

Moreover, some oil companies have testified before Congress that dealer operated stations are indeed more efficient. (Testimony of Bill Bittles, Marketing V.P. for Shell on Senate Bill 326 before the Senate Judiciary Committee p.556).

Basic economic theory and common sense also support the idea that an independent dealer, whose livelihood depends on his efficiency, would be more efficient than a salaried employee. Again, divorcement requires only that gasoline outlets be run by independent businessmen. The only reason for opposing this legislation is not efficiency and consumer benefits, it is the natural desire of oil companies to have total control of gasoline marketing from wellhead to gas tank.

Myth No. 3 - Passage of Divorcement Would Increase Consumer Prices.

This red herring finds its support in studies done by oil company economists of prices and dealer margins immediately after divorcement.

The Sorenson study claims prices and margins rose significantly more in Maryland than in the U.S. as a whole in 1979 and 1980 following divorcement.

Barron and Umbeck claim that divorcement caused prices at the divorced stations and stations in competition with them to rise significantly immediately after divorcement, and claim to be able to attribute the rise solely to divorcement via regression analysis. They then go on and take a giant, unwarranted leap of faith by assuming the long term effects of divorcement will be the same as the short term effects and come up with a "shock figure" of the cost of divorcement in order to impress legislators.

The unspoken truth of the matter is that prices and margins immediately after divorcement in Maryland were forced up BY FEDERAL MANDATE, July 13, 1979; or, "Black Friday" is the date that the majority of stations to be divorced were changed to dealer operations, usually under the direction of the person who managed the station for the oil company.

The following week, the new DOE regulations went into effect which MANDATED a company-operated mark-up of 10.59 cents per gallon but imposed a permissible margin of 15.4¢ per gallon for dealer-operation.

As noted analyst Dan Lundberg report, MANDATORY PREDATORY PRICING was in effect. Although the Maryland divorcement law was passed in 1974, it did not take effect until 1979 due to oil company challenges that were rebuffed by the Supreme Court in Exxon Corporation v. Governor of Maryland in 1978 and divorcement was not fully implemented until the end of 1981.

Moreover, DOE's mis-allocations created a situation in Maryland where long lines at the gas pumps were common; whereas, in neighboring Virginia, there were no lines at all.

To say that dealer margins and prices rose after divorcement in Maryland is like saying "The sun came up, therefore, it is warmer and brighter outside." It is totally misleading to conclude divorcement adversely affects consumers based on the Maryland market in 1979 and 1980, which the oil company economists do.

Studies by the House Small Business Committee and the state of Pennsylvania reviewed this literature and concluded that divorcement did not adversely affect consumers.

Indeed, a look at the Maryland market after decontrol and after divorcement shows quite a different story.

Barron - Umbeck contends Maryland prices and dealer margins dramatically increased immediately after divorcement.

Federal regulations finally ended in January 1981, and divorcement was fully implemented in Maryland by December 1981. It is most interesting to look at Baltimore dealer profit margins immediately after divorcement and decontrol as reported by the independent Lundberg Letter for January 1982. The Umbeck study claims self-serve unleaded regular gasoline (about 50% of the Maryland and national sales) rose dramatically.

Lundberg tells us that Baltimore dealers margin for this gasoline was not the highest or even among the highest, instead, it was **THE LOWEST MARK-UP IN THE NATION!** Moreover, the mark-up on self-serve leaded regular gasoline was also **THE LOWEST IN THE NATION!** If the economists are right, this cannot be.

The importance of this fact becomes clear when it is realized that the dealer margin is the only aspect of consumer price affected by divorcement and the only element not subject to oil company control. Oil companies may claim the margin figure is low

because of higher wholesale prices, but this is wrong, it measures only what the dealer adds to his wholesale price.

The long term effects of divorcement are shown by looking at dealer margins and consumer prices at the present time.

The Umbeck report claims the bulk of the divorcement price rise was due to unleaded self-serve gas and full-serve. The report also assumes a ratio of self-serve to full-serve of 3 to 2. The fact is that in Maryland and the nation, the ratio is over 4 to 1, or more than 80% self-service. Additionally, regular unleaded gas now accounts for 50% of the gasoline sold nationwide.

Lundberg reports that dealers in Baltimore in 1984 averaged a mark-up of 3.79¢ per gallon on unleaded regular self-serve gas, second lowest in the nation to Indianapolis' 3.72¢ per gallon. Since June, 1984, Baltimore margins have been the LOWEST in the nation, a finding directly contradictory to oil company findings.

In July, 1984, the Lundberg organization did a survey of retail gasoline prices in 63 cities. After adjusting for state and local taxes, three of the four lowest prices in the country were in the divorcement cities of Wilmington, DE; Washington, D.C; and Baltimore, MD. In general, West Coast prices tend to be lower than East Coast prices due to the presence of gasoline refined from Alaskan oil. Arco is the dominant marketer in these areas,

and allegations have been raised that at least part of its advantage is due to loopholes in the Windfall Profits Tax it applied to its Alaskan North Slope Crude. These facts make the market performance of the East Coast divorcement cities even more amazing.

Gulf Oil Products Company

REFINED PRODUCTS MARKETING

R E Hall
SENIOR VICE PRESIDENT

January 31, 1984

P O Box 2001
Houston TX 77202

Mr. Vic Rasheed
Executive Director
Service Station Dealers of America
400 North Capital Street, N.W.
Washington, D. C. 20001

Dear Mr. Rasheed:

This refers to your letter of January 12, 1984, concerning the Gulf dealer, Mr. Howard Young, in Nashville, Tennessee.

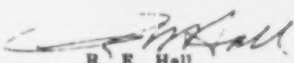
Negotiations between Gulf and Mr. Young are still underway and it is expected that an agreement satisfactory to both parties will be reached.

I would like to comment on the other issues which you raised. First, we do not believe that selling real property to a dealer with a restriction against petroleum sales is a violation of the PMPA. When a franchisor's interest is sold, it does not include the business of selling petroleum products. With or without restrictions, there is nothing more than the sale of real and personal property and, in our opinion, no sale of a business is involved in either circumstance.

Second, I do not know of any instance where Gulf has refused to recognize its dealers' rights in any context, including the purchase of service station locations. I believe Gulf has a long, proven, and successful record of progressive relationships with its dealers.

I appreciate your bringing your views to my attention.

Sincerely,


R. E. Hall

REH:mj





Chevron U.S.A. Inc.
P. O. Box 1706, Atlanta, GA 30301

February 12, 1986

Dear Chevron Jobber:

It has recently come to our attention that some Chevron jobbers have been soliciting the sale of, or have in fact sold, Chevron products to Chevron dealers who have direct Supply Contracts with Chevron. The purpose of this letter is simply to remind all Chevron branded jobbers that the occurrence of such activity may jeopardize the jobber's relationship with Chevron.

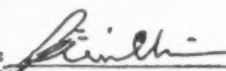
While Chevron dealers may purchase non-Chevron motor fuels from others (subject to the dealer fulfilling his obligations under his Supply Contract with Chevron continuously to offer for sale all grades of Chevron motor fuels), Chevron's Supply Contracts with both its two-party and three-party dealers require that the dealer purchase from Chevron all Chevron motor fuels necessary to serve demand for Chevron motor fuels at the dealer's station. Hence, any purchase of Chevron motor fuels by any direct supplied Chevron dealer from a Chevron jobber is a breach of the dealer's Supply Contract with Chevron.

Any sale by a jobber of Chevron motor fuels to any Chevron dealer who is now a party to a Supply Contract with Chevron constitutes a wrongful interference by the jobber with Chevron's contracts with those dealers, and may result in termination of the jobber agreement with Chevron. The Branded Jobber Petroleum Products Agreement permits termination by Chevron if "jobber knowingly induces the breach by a third party of a contract between Chevron and the third party."

If you have any questions whether any particular service station selling Chevron gasolines has a direct Supply Contract with Chevron, please contact me.

Very truly yours,

CHEVRON U.S.A. INC.

By: 
S. P. WILLIAMS
Wholesale Manager

[Excerpts from U.S. Oil Week and the book, the "Antitrust Paradox" are being held in subcommittee files.]

Mr. BEDELL. Thank you, Mr. Daskal. Did you want to reply, some of you, to that? I had the impression—I guess not.

Mr. McDONALD. Reply to that statement? Let me talk a little bit about the Los Angeles market, the largest market in the United States and where we compete. This is just as a word of explanation.

Rack prices, which have been alluded to here, historically have led the market down. That in effect is the auction market for the surplus gallon.

Conversely, when the market firms, rack prices lead the way up with dealer tank wagon prices following later.

Now in Los Angeles at the start of the year, dealer buying prices and rack prices were even less than 4 cents apart. They were in the neighborhood of 1 to 2 cents apart. We then got into an unparalleled decline in February and March, I think that everybody is aware of, due to crude prices declining. There was a great deal of speculation. There was panic buying and selling. People were eliminating their inventories, and during that short period of time, for example, approximately 2 weeks, there was maybe a 10-cent difference, a 12-cent difference between rack prices and dealer buying price.

That situation is now reversed, and I'm sure SSDA and their members are happy with this particular situation. The dealer buying prices in Los Angeles are less than what the rack prices are today at the present moment. I think the important point, though, is that dealers are not really competing with the rack buyer. They are competing with the unbranded dealer and there are ways of keeping our dealers, for example, Arco dealers, competitive with unbranded dealers as well as with other major company dealers, and I can assure you that in the Los Angeles market to my knowledge at least there was no 10-cent difference at the pump, no 5-cent difference.

Mr. BEDELL. Is that what you were talking about, the Los Angeles market?

Mr. DASKAL. No; I was using aggregated statistics I believe. It's attached as an exhibit to Mr. Rasheed's testimony. I haven't looked at it.

Mr. BEDELL. I wish you would try to make this short.

Mr. FRANK. There have been a lot of questions and comments directed toward why product prices don't immediately reflect oil prices that are observed on the spot market.

One of the reasons is that it takes typically around 45 to 60 days from the time that an integrated oil company buys oil in the field in west Texas or Wyoming and can transport it through pipelines to a refinery, put it into operating inventory, run it through that refinery, and get it out into the marketplace where it can be sold.

During the month of January we are refining \$28 a barrel oil and we are not selling it until March, and the reflection that you see is trying to sell product for, on the basis of what it costs.

Now just recently you have seen in the first 2 weeks of April this spot market for crude oil go up almost 50 percent from \$9 a barrel to \$14 a barrel. There were no complaints about the fact that crude oil prices were not increased or that product prices weren't increased by 50 percent on dealer tank wagon margins that were high and expressed to be excessive during this most chaotic market that the oil industry has ever seen in history.

There were—we have had, recently, dealer tank wagon prices 2 cents under wholesale rep prices. There have been no complaints about that, either.

Mr. BEDELL. I think we are short on time. I don't think the issue is what is the price of gasoline. I think the issue is what is the price of gasoline to dealers compared to what is the price of gasoline to your own company-owned stores, and we are short on time.

Mr. LARKINS. May I answer that, sir?

Mr. BEDELL. I guess so. You're going to pull what was pulled on me yesterday. I had a statement to make and the proponents took up all my time so I didn't say anything.

Mr. LARKINS. I just wanted to counter very briefly. While there may be a lag in the dealer prices starting down, for most of the declining period they went down at about the same rate as distributors, 2 cents a gallon per week—an unprecedented rate of decline in the industry.

On the open supply provision, we didn't see any value of the provision. Our dealers have a right under our contract to buy 40 percent elsewhere and we see no tendency to debrand our stations.

Mr. BEDELL. Your dealers have that opportunity?

Mr. LARKINS. Our lease says they must buy 60 percent from us, and as I said in my direct testimony, only about a dozen, less than a dozen of our dealers, choose to debrand, of 17,500 outlets, and we detected no trend to debranding during the period of decline.

Mr. BEDELL. There is no problem to you I guess?

Mr. LARKINS. We don't think it should be a matter for legislation. Although we, as a party to the *Bogosian* settlement, did agree to that, that does not mean we think it's a good idea to debrand or that our dealers will find it attractive to do so.

Mr. BEDELL. Apparently it has caused you no troubles. Is that what you are referring to?

Mr. LARKINS. I didn't testify this caused me no trouble. I said it was in our contract and we have said we worked out a number of things in our contractual arrangements and under PMPA, contractual provisions. Some of them are ones we might not prefer to have.

Mr. BEDELL. Well, that's the problem I have. Let me tell you first of all that I understand your position. I understand. I have been in business. I understand that your job is to try to make a profit for your business. You have got to make a profit for the stockholders. I understand that.

My criticism primarily is not of you folks. My criticism primarily is of our Government and I do not believe our Government is adequately protecting the people that it needs to protect. I also have to tell you I have a little trouble with some of your testimony because unless I misread what you just said here, Mr. Larkins, you said there was no great problem with what we are trying to legislate. But still you are definitely against it even though you have demonstrated that it is no great problem.

Mr. LARKINS. If they—

Mr. BEDELL. If I might—let me finish, please. I will let you talk, but I don't really think you ought to interrupt me.

The second problem that I have is that you made a big issue about all these different laws. Now anybody is a darned fool if they think for 1 minute that some individual operator of a filling station is going to challenge Exxon or Arco or somebody else in court unless they have inherited a big inheritance. There is no way in the world with current court costs that they are going to be able to do that, and I guess I do have trouble.

Mr. LARKINS. They do.

Mr. BEDELL. I just have real trouble with what appears to me at least to be an attempt to mislead people. Now if open supply is not a problem, then that's one thing. But Mr. McDonald, you implied that if anybody came into that station they would think they were coming in to buy your gasoline and they wouldn't be able to buy your gasoline.

That's not what my bill says at all. What the bill says is that there will be an opportunity for customers to buy something else if they wish to do so when they come into that station. They are not going to be stuck that they have got to buy some other gasoline when they thought they were coming in to buy Arco gasoline. I have trouble with what appears to me to be testimony that I think is kind of trying to mislead people. I can understand that because I think you are powerful enough you can mislead people in our country. I really believe that.

I may be wrong. I think that's what happened with the administration as well, and that gives me a prejudice, and you need to understand that.

My complaint is against the administration, our Government, in what I think is an unwillingness to adequately protect the people, and I think it happens. When we have got power, we tend to abuse it. I understand that, and I understand why we have got to, you are going to make some of these statements when you testify because you can do that and so on.

I think Marathon has a legitimate concern here. I don't think your statement was completely fair in saying that you have to dispose of stations. You don't have to dispose of them. What you have to do is lease them to someone who makes some other arrangement I think.

Mr. FRANK. Those units for the most part are not suitable to turn into Marathon branded-lease-type operations. Some of them could, but we have three options. We can lease them. We can sell them, or we can close them, and those are the options, and we would probably use all three of those options, but for the most part, they are not capable of competing in the dealer-type marketplace.

Mr. BEDELL. Mr. McDonald, what was the situation they gave Mr. Gaeta? We have had the testimony he offered you twice what you are going to get from Shell and you turned him down.

Mr. McDONALD. Let me give you a little bit of background on this.

Last year we made a major decision to restructure, so as to improve our operating efficiency and our financial outlook, and that was really in response to our views that the 1980's would be a tough competitive environment with the prediction of gloomy oil prices.

Now as part of that decision we decided to withdraw from our marketing and refining operation east of the Rockies. What we wanted to do was to have the least possible impact on both our employees in this area and also on our customers and we decided to seek viable purchasers, who would then offer franchises, their franchise, to all of our dealers.

In the States of Pennsylvania and New York we sold between 500 to 600 service stations, our Philadelphia refinery, 27 terminals and an entire pipeline system to a company called Atlantic Petrole-

um Co. which was a new entrant into the marketplace. That company offered its franchise to the 500 or 600 dealers.

We were only able to do that based on the attractiveness of the entire package of the service stations sold with the refinery. If we would have turned around and tried to, as some people have suggested here, sell the stations individually to the dealers, the good ones would have been cherrypicked. Some of them would have been sold to the dealers, but far less than the majority of the stations. As a result, a number of the stations undoubtedly would have been closed which would have affected a number of the dealers who did not have the money to buy their service stations.

Second, there is no doubt in my mind if we would have had to sell those stations individually we would have closed or made a decision to close our Philadelphia refinery with over 600 employees, and Members of Congress wrote us about that particular situation encouraging us to sell the entire package, and keep the refinery open. Congressman Florio was one of those.

In the Northeast we sold some 400 service stations to Shell Oil. Shell Oil as you well know is a major marketer with a well-known franchise. They offered their franchise to the 400 dealers that operated those service stations.

The end result of this is that we feel—it was a traumatic decision. It was traumatic for our dealers. It was traumatic for our employees, but we feel that it benefited our dealers, our employees, as opposed to some kind of piecemeal sale of individual service stations.

Mr. BEDELL. Are you saying you couldn't have sold to Shell if you had sold to Mr. Gaeta?

Mr. McDONALD. That is correct, but that service station was one of the service stations in the package that Shell Oil was interested in.

Mr. BEDELL. I would think they were if they were going to get it for half price.

Mr. McDONALD. We sold those service stations in a multimillion-dollar package to Shell Oil Co. I don't know how Mr. Gaeta got the information that he offered us twice as much as what Shell offered us. Shell offered us a price which we accepted that covered 400 service stations.

Mr. BEDELL. He's not the only one. All the other individuals were out of luck if they wanted to buy your station, is that right?

Mr. McDONALD. That's correct, but what I am saying is that more stations and more dealers stayed in business at those particular stations as a result of that particular sale.

Mr. BEDELL. That's disturbing some of us just something awful. I understand your making that decision, but you are playing God. You are the one that decided who could stay in business and who couldn't stay in business. You didn't give them a chance to bid or anything on the thing. You made up the decision that fewer people would be hurt if you did this than if you gave him an opportunity to try and bid to see whether he wanted it or not. You know, that bothers me.

Mr. McDONALD. Mr. Bedell, those dealers had the right to stay in business, because under PMPA, Shell Oil or Atlantic had the requirement to offer their franchise to those dealers at that location.

Mr. BEDELL. I would like to hear about—is that true?

Mr. DASKAL. When a refiner generally withdraws from marketing in a geographic market area, State or standard or metropolitan statistical area, he has two choices. He can either sell the stations as a package to a new franchisor such as Shell, and the new franchisor is then compelled to offer a dealer a franchise that is comparable to the franchise that the new franchisor—in this case Shell—offers.

Second—

Mr. BEDELL. Not necessarily the same as what the previous—

Mr. DASKAL. No; absolutely not, and now when we brought up PMPA, and it is brought up as protection for dealers in this situation, unfortunately what we have found in some recent cases is—and Shell did not do this in the Northeast, but what has happened in some recent cases is that when the new franchisor took over the stations, they have tried to give the existing dealer who would have a 3-year lease and full PMPA protection, a trial franchise and a trial franchise under PMPA simply says after 1 year you can terminate him, period, and that's one example of many loopholes that have developed in PMPA. We have had to fight a lot of issues under PMPA that we should not have really had to fight. The law was drafted so very tightly, and I think what may have happened is it was so tightly the bar of soap might have squeezed, it might have slipped out from under us, and I am not speaking in particular of any of the gentlemen's companies at this table.

I think that if you look at the record of litigation of the three companies at this table, they probably have been some of the better ones.

Mr. BEDELL. The fact of the matter is that you made the decision that this gentleman was going to be transferred from your franchise to Shell and that, as long as shell treated him similar to others, he was stuck with whatever their franchise was. You decided that was best for him as compared to giving him an opportunity to purchase it if he wished to do so.

TESTIMONY OF DICK MORSE, ATTORNEY, ARCO

Mr. MORSE. Mr. Bedell, if I might address that issue. I am Dick Morse, an attorney for Arco who had some involvement in the negotiations surrounding the sale of those assets. You are correct. We made an economic decision. There were 400 service stations spread over 6 States, some of which are very attractive pieces of real estate, some of which are not so attractive. We decided that we could, as an economic proposition, do the best job of withdrawal from that area in an orderly way and get the most economic benefit or recapture of assets by selling them as a package, so that was our primary objective.

A significant second objective, however, was in recognition that the good locations could go for a price. The bad locations couldn't go for any price. Some of the terrific locations would be so valuable as real estate that the dealer simply could not have afforded to purchase them, and so we would be left with a dilemma of what to do with this real estate. It might well have meant that a dealer in Mr. Gaeta's position couldn't have afforded to buy the service sta-

tion if it were sold as an individual unit with the appraised value for it.

He might not have been able to stay there under the tenancy of whomever did buy it, so he would not have had the option of remaining as a dealer. As the package was sold, he had the choice. It was his choice to make. Shell had to offer him a franchise and PMPA appropriately, I think, requires that Shell offer the franchise which is comparable to its existing franchise so that it can't discriminate against him and he then had the choice of either accepting that franchise or of leaving real estate he had leased from us and which he was being offered an opportunity to lease from the subsequent buyer, so it's a real estate transaction. You have probably been involved in some yourself.

Mr. BEDELL. Oh, I understand why you made the decision. I understand that. I understand the system is such that he is at the mercy of whatever decision is made by the people at Arco and Shell to a great extent, and maybe we can't do anything. I hope you understand.

Honestly, I get disturbed by some of your testimony because I think you are trying to mislead us, but that's beside the point. In terms of your operating your business, I understand that.

My objection is to what the Government does. My objection, Mr. McDonald, was that the Government, I think, gave away billions of dollars to your company in regard to the Trans-Alaska Pipeline tariffs. I had the people from IRS, I had the people from Treasury, and I had the people from the judicial branch of our Government all before me, met with them in person. Every one of them said that it wasn't any of their business as to whether or not we collected the proper amount of taxes or not. I don't know how much you have been involved and I don't blame you. I can only tell you that it has been a tax scandal that FERC has done nothing for 7 years to regulate tariffs on the Trans-Alaska Pipeline System.

Give Exxon credit. They did something in that case in order to properly pay, at least to some degree, their proper taxes. Since you folks didn't, why you had a big advantage over Exxon and got away with it just because the Government wouldn't try to see that we at least tried to follow the procedures to collect taxes.

Now that bothers me terribly. It doesn't have anything to do with this hearing, but when you see that, and you see what's happening to people like we have seen with Mr. Gaeta, it does build prejudice in people's mind. I am here to plead guilty to my prejudice, but it is very disturbing. I don't know if divorcement is the right answer or what. But I think you have got an awfully hard time when you say divorcement is terrible because it is going to restrict competition, but open supply is terrible because it's going to improve competition.

I think that is kind of tough to make that defense. I think it would be a lot easier for you folks if you were in here against one or the other of the proposals, frankly.

I wanted to ask you, how does the price at which you sell to the dealer in this compare with the price at which you sell gasoline at your other stores?

Mr. FRANK. Well, they are basically operating in two separate markets.

Mr. BEDELL. I understand.

Mr. FRANK. One, if I could make the analogy, K-Mart competing with Neiman-Marcus or Saks Fifth Avenue.

Mr. BEDELL. One from the other.

Mr. FRANK. The street prices are very similar. Normally our dealers' prices are 1 to 2 pennies above what the full self-serve is. I mean the self-serve operation.

Mr. BEDELL. My question is, at what price do you sell to your dealers—you have got the number?

Mr. FRANK. Dealer tank wagon prices run competitive with everyone else's—in the normal margin area of 5 to 7 cents a gallon.

Mr. BEDELL. Is it normal that the price that your dealers pay for gasoline is 5 to 7 cents per gallon less than what you sell your gasoline at your company-owned stores?

Mr. FRANK. No, sir.

Mr. BEDELL. What is it?

Mr. FRANK. Well, the difference is set by the marketplace. They are entirely two separate markets. They run—

Mr. BEDELL. You're avoiding my question. I think it's a fair question. I assume you know the difference between the average price at which you sell gasoline at your company-owned stations retail compared to the average price which your dealers have to pay wholesale for the gasoline they buy.

Mr. FRANK. Normally—they are not comparable products. You understand when the dealer buys—

Mr. BEDELL. Gasoline.

Mr. FRANK. He is buying a package that includes transportation and services.

Mr. BEDELL. I want to know the difference in the price that I would pay if I went into one of your company-owned stations and bought gasoline, and the price which your dealers pay to get gasoline to sell to me. What's the difference, average?

Mr. FRANK. The dealer tank wagon price that the dealer, the dealer pays will be less than what the price is that we are normally selling for at a company-operated station.

Mr. BEDELL. How much?

Mr. FRANK. I don't have that number.

Mr. BEDELL. I'm sure you know.

Mr. FRANK. 2 cents a gallon, but it varies with time and market conditions.

Mr. BEDELL. And you think that margin is—it only costs about 2 cents a gallon to retail gasoline in your retail stores?

Mr. FRANK. No, sir; it doesn't. It costs more than that.

Mr. BEDELL. So it costs you more to retail gasoline at your company-owned stores than the difference between what you sell gasoline to your dealers for and what you market it at your station?

Mr. FRANK. We operate both of those entities with a profit motive.

Mr. BEDELL. No argument, no argument, but that's the way—those others are independently owned, are they not, are independently operated? You have got your own company-operated stores and then you have got your others that are leased out to others, isn't that correct?

Mr. FRANK. That's right. They market under two separate logos.

Mr. BEDELL. I understand that. I want to be sure your testimony is not misunderstood.

What you have testified is that the difference between the price which you charge retail at your company-owned stores and the price that your dealers have to pay you for gasoline is less than what it costs you to market gasoline in your company-owned stores. Is that not what you have testified?

Mr. FRANK. And I am talking about the lowest grade, the regular grade, the pool margin concept.

Mr. BEDELL. But that is your testimony?

Mr. FRANK. I don't know that your paraphrasing of what I said is right.

Mr. BEDELL. If it isn't, I want to get it straight. What I heard you say was that the difference between the price you charge at the retail stores which you operate and the price that your dealers have to pay for the gasoline they buy from you is less than what it costs you to market your gasoline in your company-owned stores? That's what you said, and if that is wrong—

Mr. FRANK. No; I said there was a spread on the regular grade that was 2 cents a gallon or more.

Mr. BEDELL. That's right, and it costs you more than that to—

Mr. FRANK. Costs more than 2 cents a gallon to run a service station, yes, sir; but on the pooled margin concept. We sell more than just regular gasoline. Regular gasoline, for instance, at the wholesale rack sells for the same price as unleaded regular, but yet on the street leaded regular sells for less than unleaded regular.

Mr. BEDELL. Well, that's pretty damaging testimony because what you have really said is that dealers are having to pay more for the gasoline they buy from you than in effect your stores that are competing with them are having to pay for the gas they buy from you.

Mr. FRANK. I'm afraid—

Mr. BEDELL. You're trying to dig your way out of it.

Mr. FRANK. No, sir; I am not. With all due respect, I would like for you to keep in mind that those are two independent marketplaces that we are competing with competitors on the street in that marketplace who are establishing those prices.

Mr. BEDELL. I understand. One of them—

Mr. FRANK. They are different markets, sir.

Mr. BEDELL. I am not questioning that, but you are competing also directly with those people that you are selling gasoline to and they are down the street.

I don't want to take any more time.

Mr. FRANK. We are not competing with those people. I'm trying to make the—

Mr. BEDELL. You are as far as I'm concerned. I go to your place or I go to theirs.

Mr. FRANK. Does K-Mart compete with Neiman-Marcus?

Mr. BEDELL. Darned right; sure they do. They can buy things in Neiman-Marcus or they can go to K-Mart and buy them. If I buy from K-Mart, I'm not buying from Neiman-Marcus. My concern is that we have got laws that say that you can't sell to somebody else for less than you sell to others.

You are selling to your own stores for less than what you are selling to your dealers, and we have got somebody waiting for the——

Mr. FRANK. It's a different market. We are selling a different product in that market.

Mr. BEDELL. Same product—we're talking about regular gas.

Mr. FRANK. One contains an additive package and a whole variety of services that go with it.

Mr. BEDELL. Well, I don't know. There are people waiting for this room.

We want to thank you all for your testimony here.

[Whereupon, at 2:15 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

APPENDIXES

APPENDIX A.—PREPARED STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE, OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Nicholas Mavroules
Chairman
Subcommittee on General Oversight
and the Economy of the
Committee on Small Business
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your request that the Department of Justice testify at a hearing scheduled for April 17, 1986 on H.R. 3824, the "Motor Fuel Sales Competition Improvement Act of 1985." As agreed between our staffs, because we are unable to attend the hearing, we are submitting this report on the bill in lieu of a personal appearance before the Subcommittee. I hope our views are helpful in your consideration of H.R. 3824.

1. The Department's Position

The Department testified in opposition to the Senate version of this bill, S.1140, in hearings before the Senate Judiciary Committee on October 9, 1985. Similar bills were also opposed by the Department during the last two Congresses. The Department of Justice believes this legislation would have serious anticompetitive effects and therefore opposes its enactment.

Section 2 of the bill would amend the general antitrust provisions contained in the Clayton Act, 15 U.S.C. § 12 et seq., by adding a new section 3A dealing exclusively with the distribution of gasoline. Subsections (a) and (b) of the proposed section 3A, the modified "open supply" provisions, would prohibit any producer or refiner from requiring or agreeing to require any retail motor fuel dealer to purchase more than 70 percent of his retail sales of motor fuel from such producer or refiner. Subsection (c) would require dealers selling motor fuel under a refinery or producer trademark to provide reasonable notice at the point of sale of any sales of

motor fuel not refined by the trademark refiner or producer. A dealer could, however, either convert one or more existing, or establish new, storage tanks for sale of motor fuel supplied by other than the trademark owner.

Subsection (d) prohibits a large integrated refiner 1/ from directly operating a retail gasoline outlet in the United States, while leaving intact its right to own service stations under circumstances where the refiner is not selling motor fuel through an employee, commissioned agent or other person in such a fashion that the refiner has substantial operational control over the station.

The bill contains no enforcement provisions. Given that it is a proposed amendment to the Clayton Act, however, the remedial provisions of that Act would automatically apply: injunctive relief and single damages for the United States; 2/ injunction relief and treble damages for other injured persons. 3/ This differs substantially from the enforcement provision contained in S. 1140. 4/

1/ Subsection (e)(3) of the bill defines "large integrated refiner" as a refiner producing more than 30% of the crude oil supplied to its refinery and whose total refinery capacity exceeds 50,000 barrels per day. S. 1140 differs in the second requirement, setting a higher capacity threshold for the prohibition--175,000 barrels per day. While this change increases the potential scope of the bill's coverage--from firms representing just over 75% of the total domestic refining capacity in S. 1140 to over 90% in H.R. 3824--the 30% integration requirement in both bills may be the more limiting in most cases. In any event, under either bill, much more than a majority of the capacity of the domestic refining industry is embraced within the prohibition of service station operation.

2/ Sections 15 and 4A of the Clayton Act, 15 U.S.C. § 25, § 15a, respectively.

3/ Section 16 and sections 4 and 4C of the Clayton Act, 15 U.S.C. § 26, § 15, and § 15c, respectively.

4/ S. 1140 placed primary enforcement responsibility with the Federal Trade Commission, authorizing it to seek injunctive relief and damages in federal court, and to promulgate information collection regulations. Private parties would be allowed to sue for injunctive relief and single damages.

Section 3 of H.R. 3824 would amend the Small Business Act by specifically targeting service station dealers as eligible for deferred-basis SBA loans to acquire service station properties. Section 3 works no substantive change in the Small Business Act. Section 4 of the bill establishes the effective date of the legislation as one year after enactment.

If enacted, H.R. 3824 is likely to lead to substantial restructuring of the retail petroleum industry in the year following enactment. Legislation that would bring about such disruption should be enacted only where there is clear and convincing evidence that there has been a serious failure of the competitive market to allocate goods or services efficiently. The Department believes that no such failure exists in the motor fuel industry. Moreover, even if some market failure were demonstrated, H.R. 3824 could only exacerbate the problem. The Department believes the bill is likely to have severe anticompetitive effects and to cause substantial marketing inefficiencies that are likely to lead to higher gasoline prices for the consuming public. Our views are explained in detail below.

2. The Bill is Unnecessary

This bill is an effort to correct an alleged problem at the wholesale and retail levels of the petroleum industry. Since the early 1970s, many independent service stations have gone out of business and there continues to be a slow decline in their numbers. ^{5/} At the same time, the volume share of refiner-operated outlets has increased. Furthermore, there is some evidence that in late 1982, the volume share of jobber-supplied retail outlets began to decline. ^{6/} Citing these developments, some industry observers have contended that a competitive defect exists at the wholesale and retail levels of the petroleum industry that, unless remedied, may result in the elimination of jobbers and independent service station dealers as a class. Such a result is viewed as unfair both to small business interests and to consumers of motor fuels who fear they may be forced to pay higher than competitive prices.

^{5/} The number of franchisee-owned retail gasoline businesses has fallen 42 percent, from 176,259 in 1972 to 102,172 in 1985. U.S. Department of Commerce, *Franchising in the Economy* (Jan. 1986).

^{6/} Office of Competition, Department of Energy, *Deregulated Gasoline Marketing: Consequences for Competition, Competitors and Consumers*, DOE/CP-0007 Draft at 111, 80 (March 1984) (hereafter referred to as "DOE Report II").

The most frequently expressed concern regarding the competitive structure of the domestic petroleum industry is that it is anticompetitive or "unfair" for refiners to compete at the wholesale or retail level with jobbers or independent service stations that they supply. Integrated refiners are said to favor their own operations by raising the prices charged to jobbers or independent dealers while transferring gasoline supplies to their dealers or company stores at lower than market prices. Thus, the argument goes, the integrated refiner is engaging in predatory behavior against its independent rivals. In addition, supply contracts between refiners and independent dealers are attacked as unwarranted restrictions on the ability of jobbers and dealers to compete at their respective levels.

Predatory practices in the gasoline industry have been alleged for many years. In response to allegations of predatory pricing against independent retail dealers, Congress enacted Title III of the Petroleum Marketing Practices Act, 7/ which directed the Secretary of Energy to study possible "subsidization" of retail gasoline dealers by major refiners, and whether such subsidization, if it occurred, was predatory and posed a threat to competition. The Secretary's Final Report to the Congress, 8/ published in January 1981, concluded that there was no evidence of subsidization at the retail level as part of a predatory campaign directed against independent dealers. 9/

A second Report by the Department of Energy, published in March 1984, reiterated that the decline of independent dealers was attributable to non-predatory causes, such as altered market conditions and past DOE price and allocation regulations. 10/ More specifically, the Reports concluded that the DOE petroleum price and allocation regulations had significantly disadvantaged certain independent retailers' ability to obtain petroleum products and to price them at competitive levels. Those regulations were also seen as

7/ 15 U.S.C. § 2841 (1976).

8/ Office of Competition, Department of Energy, Final Report: The State of Competition in Gasoline Marketing (As required by Title III of the Petroleum Marketing Practices Act) (January 1981) (hereafter referred to as "DOE Report I").

9/ Report at Preface; see generally Chapter III.

10/ DOE Report II at 3-19.

causing or contributing to other market distortions that harmed the ability of independents to compete effectively with their integrated rivals. ^{11/} Thus, after extensive empirical and documentary investigation, the Department of Energy found no evidence of predatory subsidization in the retail petroleum industry.

Moreover, the evidence suggests that gasoline retailing is competitive in most major markets, and generally so across the continental United States. ^{12/} After a decade of controls, the gasoline marketing industry appears to be reacting to change in the marketplace, including increased costs of operation and changing customer preferences, in a normal and competitive fashion. The market share of any given refiner nationally and in any given state is relatively low. ^{13/} Recent oil company mergers have not resulted in significant changes in refiner marketing shares. ^{14/} Moreover, the

^{11/} These conclusions are mirrored and expanded upon in other studies. See Marvel, H.P., "The Decline of the Lessee Gasoline Dealer," (March 1982) and Honeycutt, T.C., "Competition in Controlled and Uncontrolled Gasoline Markets," published in III Contemporary Policy Issues, Spring 1985.

^{12/} DOE Report II; Fenili, R., Lane, W., and Delaney, J., "Gasoline Marketing 1980-1983: A Return to the Competitive Marketplace," Energy Information and Analysis, Washington, D.C., 1983.

^{13/} See, e.g., National Petroleum News: 1985 Factbook Issue showing numbers of branded retail outlets by company and state; American Petroleum Institute, Discussion Paper of October 1985: Market Shares and Individual Company Data for U.S. Energy Markets: 1950-1984; Lundberg Survey, Inc., National Share of the Market, December 1982; and "A Short Term Analysis of the Effect of Concentration on Price in the Gasoline Market" The Petroleum Marketing Monthly (April 1985).

^{14/} See Testimony of Timothy Muris, Director, Bureau of Competition, Federal Trade Commission, Before the Committee on the Judiciary, United States Senate, (March 15, 1984); Report of the Federal Trade Commission, Mergers in the Petroleum Industry (1982); Texaco Inc. and Getty Oil Co.; Proposed Consent Agreement with Analysis to Aid Public Comment, 49 Fed. Reg. 8,550-64 (1984). Where proposed mergers would have substantially lessened competition in specific markets, the Federal Trade Commission has ordered divestiture of certain petroleum-related assets, including refineries. Where proposed

structure of gasoline marketing is such that entry barriers for new competitors are relatively low. This means that if one or more refiner-operated retail outlets attempted to raise their retail prices above competitive levels in a particular market, new retail outlets could enter the market and prevent the predators from earning long-term monopoly profits. Hence, any campaign of predatory behavior would not only involve short-term losses; it would very likely fail to recoup those losses in the long run.

This evidence is reinforced by the fact that integrated refiners, who face a substantially unconcentrated market in most sections of the United States, have no apparent incentive to engage in anticompetitive predatory behavior in order to drive jobbers and independent gasoline retailers out of business. Generally, a firm would engage in predatory conduct only if it could reasonably hope to drive its competitors from the market, so that it might then increase its prices to monopoly levels without fear of competition. In other words, the hypothetical predator would be willing to lower prices and lose money in the short run, with the hope of making higher profits in the long run.

For example, to be effective in the retail gasoline industry, such a predatory scheme would, at a minimum, have to eliminate independent gasoline retailers. Even if an integrated refiner were able to drive some of its independent dealers out of business, however, it would still have to compete at the retail level with the dealers of other refiners. Thus, the strategy would also have to ensure the elimination of competition from other integrated refiners, either by driving them out of the market as well, or by establishing a horizontal price-fixing agreement among the surviving companies. Generally speaking, the smaller the number of companies in the market, the easier it is to agree on prices and maintain a cartel. Accordingly, the degree of concentration of refiners in local retail gasoline markets may be correlated closely with the probability of success of a predation scheme, and both are typically quite low. Employing a similar analysis, predation by refiners against jobbers is equally unlikely.

14/ Footnote Continued

mergers, based on wholesale gasoline sales, would have resulted in state or regional market share distributions that could adversely affect competition, the Commission has required that certain marketing properties, including retail stations, be sold.

In any event, even if predation were occurring in some retail gasoline markets, the existing antitrust laws provide an adequate remedy for such conduct. For example, anticompetitive attempts to drive independent dealers out of the market are actionable under the Sherman Act. In such situations, the offending firms would be subject to both civil and criminal prosecution. Private remedies also exist in the form of injunctive relief and treble damages. The antitrust laws also prohibit a wide variety of other conduct ancillary to a predation scheme that unreasonably restrains or substantially lessens competition--such as horizontal price fixing. Unlike the approach of this bill, the antitrust laws provide effective remedies for predatory conduct without requiring extensive regulation of, or proscriptive impediments to, day-to-day responses to business conditions that are necessarily diverse, local, and rapidly changing. This country's unsatisfactory experience with gasoline marketing regulations illustrates some of the problems likely to be created by the proposed bill. In contrast, the antitrust laws are intended to--and do--promote efficient business behavior by preserving the flexibility of businesses to respond, within appropriate boundaries, to changing market conditions that the firms themselves are in the best position to know and assess.

In sum, no persuasive reasons have been advanced for enacting such far-reaching legislation as H.R. 3824. We are not aware of any credible evidence that anticompetitive predatory behavior is occurring at the wholesale or retail gasoline level, nor do we deem it likely that predatory conduct intended to drive a significant portion of jobbers and independent dealers out of business could succeed. Rather, the available evidence suggests that past DOE regulations, altered market conditions, and other factors have contributed more to the problem faced by the independents than any allegedly anticompetitive activity by integrated refiners. In any event, the antitrust laws provide an adequate remedy for any predatory or unreasonably restrictive conduct that may hereafter be identified.

3. The Bill Would Have Serious Anticompetitive Effects

The Department opposes H.R. 3824 not only because it is unnecessary, but also because it would have severe anticompetitive repercussions throughout the petroleum industry. Two provisions of the bill are of particular concern: the "divorcement" provision, and the modified "open supply" provisions.

A. The Divorcement Provision

The Department is opposed to the divorcement provision of H.R. 3824, which would prohibit large integrated refiners from operating retail outlets, i.e., selling gasoline directly to the public at retail. This would eliminate an entire group of competitors from the marketplace that have established their own niche of consumer preference. Such arbitrary action could lead to inefficiency and higher consumer prices.

As indicated above, the retail gasoline industry is competitive in most markets. Refiners have partially integrated into retailing with a variety of arrangements with the persons actually operating the stations owned by the refiners. Absent reason to believe there is a serious market failure, the marketplace can be relied upon to ensure that these voluntary, consensual arrangements will ultimately result in an efficient, competitive distribution of motor fuel. Arbitrary restrictions on these arrangements will not guarantee lower retail prices; rather, they are far more likely to force consumers to pay for a less efficient distribution method in the form of higher gasoline prices or lesser availability of supply, or both. Both economic theory and empirical studies of state divorcement laws support this view. ^{15/}

Moreover, to the extent lessee dealers believe that divorcement legislation will enhance their position in the competitive marketplace, their faith may be badly misplaced. If divorcement were adopted, existing refiner-operated outlets, usually large-volume outlets in heavily populated areas, would be sold within the year to the highest bidder. Most likely this will be a chain-marketer that operates "pumpers"--stations with a strong emphasis on high volume and low price. Lessee dealers typically do not have the capital to make such investments. Thus, the refiner's presence in the area is likely to be reduced. But the 1984 DOE Report concluded that a successful retail presence by a refiner in an area tends to strengthen the position of that refiner's retail lessee-dealers in the same area, because the refiner has a greater incentive to promote its brand name. ^{16/} Divorcement would therefore likely weaken the position of lessee-dealers relative to all their competitors.

Recognition that vertical integration may have benefits does not mean that the entire retail industry should be

^{15/} For a survey of studies of divorcement, see DOE Report II at 1v, 97-105.

^{16/} DOE Report II at 126.

vertically integrated, however, for it is clear that independent dealers continue to serve an important function. While many independent dealers have gone out of business in the past few years, nationally only about 16 percent of domestically refined gasoline is sold through refiner-operated retail outlets. ^{17/} The marketplace should be relied upon to determine the mix of refiner operated and independent outlets without governmental intervention, since the result will be the optimum that provides the greatest benefit for consumers.

B. The Open Supply Provision

The Department is also opposed to the modified "open supply" provisions of sections 2(a) and (b) of the bill, which would prohibit producers and refiners from requiring or agreeing to require any retail motor fuel dealer to purchase more than 70 percent of his retail sales of motor fuel from such producer or refiner. This provision is intended to increase a dealer's flexibility with respect to securing gasoline supplies by substantially restructuring existing supply arrangements in a way that is intended to enhance a given dealer's ability to secure gasoline from a different supplier without violating existing supplier-dealer contracts. The antitrust laws, however, already prohibit non-price contractual restraints such as exclusive dealing arrangements or requirements contracts that are determined to be anticompetitive under the rule of reason approach. ^{18/}

Arrangements whereby a buyer and seller agree that the buyer will use or deal only in the goods or services of the seller, or that the buyer will purchase all or a substantial portion of its total requirements for specified goods or services only from the seller, do not necessarily restrain trade in an unreasonable way or to an unreasonable degree. The procompetitive benefits of such arrangements must be weighed against any likely anticompetitive effects in order to determine their legality under the antitrust laws. While the economic effects of various contractual provisions are likely to vary among cities and regions, exclusive dealing and requirements contracts often provide benefits for both dealers and suppliers in the gasoline industry and, hence, most

^{17/} DOE/EIA-0380 (85/12), Petroleum Marketing Monthly 115 (Dec. 1985).

^{18/} See *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 49, 57-59 (1977); *National Society of Professional Engineers v. United States*, 435 U.S. 679, 690-92 (1978).

importantly, for consumers. For example, such arrangements assure the buyer a steady supply, provide some protection against price increases, provide suppliers and dealers with information necessary to make long-run plans, and reduce the expense and risk of product shortage. Such features help to reduce transaction costs for both the buyers and the sellers; such increased efficiencies are passed on, through the process of competition, as lower prices to consumers. ^{19/} Furthermore, supply contracts provide refiners with the incentive to maintain high standards of quality control, since refiners can recoup their investments in quality services and products through their dealers' sales.

The potential procompetitive benefits of exclusive dealing arrangements are not in doubt. Where the market structure of an industry is characterized by numerous buyers and sellers, such arrangements often promote competition by ensuring stable markets and mutually advantageous business relationships. ^{20/} The gasoline industry currently is characterized by relative ease of entry into wholesaling and relatively low levels of concentration in both refining and retailing. Accordingly, the types of contractual distribution arrangements that would be affected by this bill are likely to have procompetitive effects, and any anticompetitive effects may be challenged under the antitrust laws.

The bill's modified open supply provision would prohibit use of exclusive dealing contracts and allow requirements contracts only when such contracts expressly permit the buyer the right to purchase elsewhere whenever it is favorable to him so long as he has fulfilled his 70 percent purchase obligation to his trademark supplier. This would, in effect, subject exclusive dealing and greater-than-70-percent-requirements contracts to per se illegality instead of rule of reason analysis. As a result, the potential procompetitive benefits of such supply arrangements would be denied not only to producers, refiners and distributors, but to retail gasoline dealers and to the motoring public. We are aware of no reason why such harsh treatment should be accorded to these private contracts, much less why this bill should override existing antitrust law precedents in this area.

^{19/} See Divorcement of Motor Fuel Service Stations: Hearings on S. 326 Before the Senate Judiciary Comm., 97th Cong., 1st Sess. 403 (1981) (statement of Assistant Attorney General William F. Baxter).

^{20/} See Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 45 (1984) (O'Connor, J., concurring).

In the absence of divorcement, open supply legislation, by granting additional contractual rights to dealers, would reduce the incentives of refiners to continue their relationships with dealers, encouraging refiners to operate their own retail stations or to sell only to wholesalers. Thus, open supply would likely result in fewer dealerships. If divorcement and open supply were imposed together, as proposed by this bill, integrated refiners might choose to shift distribution even further than they already have away from lessee-dealers and in favor of wholesalers. Thus, the interference with the marketplace caused by divorcement and open supply, either singly or in combination, is most likely to harm the key group that these measures were designed to protect, namely the lessee dealers.

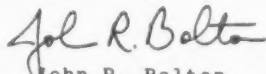
4. Conclusion

As detailed above, no persuasive reasons have been advanced for enactment of H.R. 3824; indeed, the available evidence strongly suggests that such legislation is not needed. First, there is no evidence or likelihood that predatory behavior against jobbers or independent dealers is occurring or successfully could occur in the gasoline industry. Rather, changes in the number of independent retail gasoline stations are far more likely attributable to industry changes in the past several years, including the effects of past DOE price and allocation regulations, changed market conditions, and trends toward high-volume, low-overhead gasoline stations and the growth of specialized repair centers. Moreover, the bill is likely to result in significant loss of efficiencies as it would disrupt the functioning of the wholesale and retail gasoline markets and would dramatically interfere with competitive market mechanisms. In our view, enactment of the bill would increase gasoline prices to consumers.

For all these reasons, the Department of Justice strongly recommends against enactment of this legislation. If the members of the Subcommittee have any questions concerning our position on H.R. 3824, we would be pleased to respond in writing at any time.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



John R. Bolton
Assistant Attorney General

APPENDIX B.—PREPARED STATEMENT OF LOUIS L. GOLDSTEIN,
COMPTROLLER OF THE TREASURY, ANNAPOLIS, MD



LOUIS L. GOLDSTEIN
COMPTROLLER OF THE TREASURY
LOUIS L. GOLDSTEIN TREASURY BUILDING
P.O. BOX 466
ANNAPOLIS, MARYLAND 21404-0466
269-3801

April 10, 1986

The Honorable Nicholas Mavroules
Chairman, Subcommittee on General Oversight
and the Economy
U.S. House of Representatives
B-363 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Mavroules:

Thank you for the invitation to testify on H.R. 3824. Unfortunately, prior commitments preclude my participation on April 17, 1986. Consequently, we ask that these comments be made a part of the record.

We support and encourage the passage of H.R. 3824 except for the provision of exempting certain refiners. We believe the divorce of refiners from the operation of retail service stations should be total, with no exceptions. If, in the wisdom of your Committee, an exemption remains for refiners with capacity of 50,000 barrels per day or less, we ask that you provide a preemption clause for state statutes where such state laws are more strict and contain no exception, as is the case in Maryland.

In recent months in the State of Maryland and in many other areas throughout the country, there has been a great disparity between the price charged a lessee dealer and that charged a wholesaler (jobber/distributor)—30 cents per gallon was commonplace in our State. With the lessee a captive customer of the refiner, not only is he at a competitive disadvantage (in areas where wholesalers supply retail stations) but he is unable to pass on to purchasers, the lower price which they are certainly entitled to enjoy. The argument of having to charge a dealer more because of the refiner's real estate investment in the location may have been true when rents were assessed at 1½ cents or 2 cents per gallon, but it is no excuse now that rents paid by dealers to refiners are often in thousands of dollars per month.

My telephone number is (301) - 269-3801

TTY for Deaf: Annapolis Area 269-2609

AN EQUAL OPPORTUNITY EMPLOYER

TTY for Deaf: Baltimore Area 383-7555

Section 3A(a) should go a long way in addressing this problem. If the refiner won't offer a competitive price to the dealer, the dealer could then go to a competitively priced supplier for at least a portion of his requirement. Section 3A(c) is a vital part of providing the necessary mechanism. Without it no dealer could afford the expense of extra tanks, pumps, replacement driveways, etc., while being on short term 1- to 3-year leases.

Small business is the backbone of this nation. Service station dealerships are small business, people who have a stake in the community, people who can and do respond efficiently and quickly to community needs, people who are there for service, people whose earnings remain in the community and are not sent far away to fill the coffers of a few giant conglomerates. For this reason, it is imperative that we insure the economic viability of the retail service station dealer; H.R. 3824 contributes to that end.

Recent trends involving mergers, market withdrawals, pricing methodology, etc., vividly demonstrate the need for both "divorcement" and at least some portion of "open supply."

Maryland presents a very factual scenario. Arco withdrew and Shell immediately acquired its stations. Because of the solid dealer base, it was business as usual, no closed stations, no lost revenue, no consumer inconvenience.

On April 1 of this year, BP withdrew from retail marketing in our State. Crown Central Petroleum Corporation acquired the facilities and we enjoyed the same experience, no inconvenience, smooth changeover, the same conveniences for former BP consumers, and no wholesale price hikes.

Without retail service station divorcement firmly in place, what might the circumstances have been? How would the consumer have fared without all those individual independent competitors (dealers) vying in the market place? With only four refiners controlling 63 percent of the gasoline sales and all those stations company operated, we would not be enjoying 89¢ per gallon gasoline today. With four marketers at the helm, do you think we would have anywhere near the quantity of service stations to provide the convenience and services we enjoy today? Or do you think it might be possible that refiner may reduce his investment in service stations and overhead and compel the consumer to use fewer facilities, especially since he now has only three prime competitors; perhaps he may even be able to charge "33¢" more per gallon. I ask you, what would happen in the case of a withdrawal or merger if only four marketers operated in the Maryland area?

Maryland's divorcement law is not only a safety net against the aforementioned possibilities, its track record of benefits continues;

namely, stability in the marketplace with fewer station closings (less than half the national average). Stations are better equipped now than the dealer has some degree of security.

The small independent dealer also plays a role not very often recognized, a role of "life" after "death." There have been many occasions when a refiner has abandoned a location only to have a dealer purchase the facility and continue its operation. In such instances, the convenience remains for the consumer, one more individual continues to earn a living, and the community is provided with a service that it wouldn't otherwise have.

It is our understanding the State of Washington has recently passed a law that provides for "open supply" similar to the provision you are currently considering. There have been several states that have enacted "the below-cost selling bills" that seek to provide a more competitive atmosphere in the retail community.

One final thought--if there were 4 refiners operating 400 salary operated service stations, you would have 4 competitors in the marketplace. If those same 400 service stations were operated by independent dealers, you would have 400 competitors in the marketplace. This, is American free market competition.

It has been our honor and pleasure to testify on numerous occasions before various committees of the United States Congress considering legislation of this type. In each instance, we have provided statistics to the appropriate committee that clearly illustrates smaller dealer margins resulting in lower posted prices for the consumer. In your travels around the Maryland suburban area of the District, you most certainly have noticed the continued growth, rehabilitation, and modernization of existing facilities in our State. Divorcement has not been a deterrent in any manner shape or form, rather it has provided a mechanism that insures the economic viability of the service station industry, the increased conveniences provided to the motorist, and a just plain healthier business environment.

Thanking you for the opportunity to testify and with best wishes for continued success, good health and happiness, I am

Cordially yours,



Louis L. Goldstein

LLG/bjg

APPENDIX C.—PREPARED STATEMENT, WITH ATTACHMENTS, OF THE
AMERICAN PETROLEUM INSTITUTE

API Statement on H.R.3824

Summary of Position on H.R.3824

The American Petroleum Institute (API) is pleased to submit these comments regarding H.R.3824, the Motor Fuel Sales Competition Improvement Act of 1985. The API is a trade association which represents about 220 corporate and 5,700 individual members who are engaged in all aspects of the petroleum industry, from exploration and production to refining and marketing. API is strongly opposed to the bill.

H.R.3824 would require two distinct but related changes to gasoline marketing: (1) limitations on branded supply; and, (2) retail service station divorcement. Both are contained in Section 2. Section 3 provides financial assistance to dealers for the purchase of gasoline service stations.

The legislation would impose these regulatory limitations on some U.S. refiners apparently in response to allegations of unfair competition. Such allegations, however, are not supportable by evidence. Further, these Section 2 regulatory approaches of H.R.3824 would not be in the interest of American

motorists and might well harm service station dealers whom the legislation presumably is to help. H.R.3824 would amend the Clayton Act in ways similar to S.1140, a Senate bill which was opposed by representatives of the Federal Trade Commission and Department of Justice, the two agencies primarily charged with enforcement of the antitrust laws, and by the Antitrust Law Section of the American Bar Association (ABA). In the ABA statement of opposition to S.1140, the Antitrust Law Section cites the limits on refiner operation of retail outlets as both unnecessary and anticompetitive. The Antitrust Law Section also characterizes the limits on branded supply as potentially harmful to small refiners of branded gasoline. These arguments are equally valid in respect to H.R.3824, and are compelling reasons why this proposed legislation is not in the public interest.

Background: The Gasoline Market Since Deregulation

There is ample evidence that the deregulation of the U.S. gasoline market in January 1981 has benefited the American consumer. For example, the U.S. average retail price of unleaded regular gasoline decreased from \$1.30 per gallon as of January 1981, to \$1.19 per gallon as of January 1986, despite inflation and higher gasoline excise taxes. As another example, the average nationwide retail price (excluding taxes) of finished motor gasoline exceeded the refiner acquisition cost of crude oil

by 37 cents a gallon in 1980, the last full year of gasoline market regulation. By 1985, this difference was only 27 cents (less than 21 cents in 1980 dollars).¹

Additionally, the era of decontrol has been associated with increases in productivity and modernization, or upgrading, of gasoline marketing facilities. Average labor productivity at gasoline service stations increased at an annual rate of 1.7 percent during 1977 to 1980. In contrast, during 1981 to 1984 the annual rate of growth was 4.3 percent.²

American Petroleum Institute survey data reveal a substantial increase in modernization and rebuilding of service stations. For the most recent period for which data are available, 1983 to 1984, outlets modernized and rebuilt increased 52 percent and 78 percent, respectively. During that same period, construction of new outlets increased only 14 percent and the number of outlets deactivated decreased 7 percent.

1. Source for these calculations is the U.S. Department of Energy, Energy Information Administration, Petroleum Marketing Monthly, November 1985, published January 1986. Calculations were made using Table 1. "Crude Oil Prices, 1978 to Present," and Table 3 "Refiner and Gas Plant Operator Sales Prices of Petroleum Products to End-Users, 1978 to Present." The 1980 average refiner acquisition cost (composite price per barrel) was divided by 42 and subtracted from the 1980 average price for finished motor gasoline. The 1985 calculation was made using an unweighted average of January through November prices.

2. Data from U.S. Department of Labor, Bureau of Labor Statistics, Office of Productivity and Technology, computer printouts showing output per hour of all persons, November 1, 1985.

These changes in productivity and the funds spent for upgrading likely will lead to future consumer gains, through increased efficiency. Hence, consumers benefited almost immediately, and will continue to benefit in the long run, from the decontrol of gasoline in 1981. These changes since 1981 show that United States motorists are well served by a free market for gasoline.

These consumer gains have been accompanied by substantial market adjustments. Many refineries, wholesale distribution facilities and retail gasoline outlets have ceased operation in recent years. For service stations, however, most of the reduction in number appears to have occurred prior to decontrol.¹ Further, there is evidence that the removal of federal price and allocation controls on gasoline has benefited dealers. For example, according to a recently published study, decontrol enabled dealers both to increase self-service sales and to raise full-service margins, the latter from 13-14 cents per gallon in January 1981 to 25-28 cents per gallon in December 1983.² Also,

1. U.S. Department of Energy, The State of Competition in Gasoline Marketing, January 1981, p. 173. The number of lessee dealers fell from 112,000 in January 1972 to 51,000 in January 1980. For open dealers, the fall was from 93,000 in January 1972 to 48,000 in January 1980.

While comparable data are unavailable beyond 1980, total outlets affiliated with the two dozen largest oil companies fell from 179 thousand in 1977 to 105 thousand in 1981, and to 96 thousand in 1984. Hence, the annual rate of closing was greater during 1977 to 1981 than during 1981 to 1984. See Department of Energy, Performance Profiles of Major Energy Producers 1983, Volume 2, February 1985, p. 50 and Performance Profiles of Major Energy Producers 1984, January 1986, p. 68.

2. R. Fenili, "The Impact of Decontrol on Gasoline Wholesalers and Retailers," Contemporary Policy Issues, Western Economic Association, Spring 1985, p. 126.

the 1972-81 decline in service stations' share of tire, battery, and accessory (TBA) sales was reversed during the 3 years following decontrol as average annual TBA sales rose 50 percent, with the highest percentage growth among traditional outlets.¹ Hence, there appears no economic or social purpose to re-regulation of the market along the lines proposed by H.R. 3824.

Contents of H.R.3824

H.R.3824 amends the Clayton Act in regard to distribution of gasoline (Section 2), and amends the Small Business Act in respect to financial assistance to small business concerns acquiring motor fuel service stations (Section 3).

Section 2: Amendment of the Clayton Act

The Clayton Act is amended by adding a new section 3A. Part (a) of this section prohibits any crude oil producer or refiner from requiring its affiliated motor fuel dealers to purchase more than 70 percent of their monthly retail sales of motor fuel (gasoline and diesel) from that producer or refiner. At present, there are several hundred brands of gasoline, but approximately two-thirds of motor gasoline sales are made under the trademark of fifteen major refiners, and most of the remaining one-third of sales are made under other refiner trademarks. The new section

1. National Petroleum News, "Exclusive Service Job Analysis Shows Station TBA/Repair Revival," September 1985, p. 49.

3A, parts (a) to (c), would arbitrarily restrict the amount of motor fuel refiners can sell under their trademarks. Many local or regional refiners, as well as large oil companies, could be limited by the provision in this section.

The Clayton Act also is amended by the new Section 3A, parts (d) to (e), which prohibit the operation of motor fuel service stations by large integrated refiners, arbitrarily defined as firms with more than 50,000 barrels per day of refining capacity, and producing more than 30 percent of domestic and foreign oil supplied to their refinery (ies).

Section 3: Amendment of Small Business Act

Section 3 amends the Small Business Act for the apparent purpose of providing financial assistance to dealers for the purchase of gasoline service stations, which would include those which may be offered for sale as the result of the divorcement provisions of Section 2 of the bill. Similar language previously was proposed because small business financial assistance cannot be made available for the purpose of buying land.¹ A substantial fraction of the cost of service stations is land cost.²

1. See U.S. House Committee on Small Business, Report on "Small Business Motor Fuel Marketer Preservation Act of 1980," August 20, 1980, p. 26; and U.S. Senate Committee on the Judiciary Hearings on "Small Business Motorfuel Marketer Preservation Act of 1980," September 1980, pp. 6, 98, and 280.

2. Department of Energy, The State of Competition in Gasoline Marketing, January 1981, p. 199.

Why Section 2, Parts (a) to (c) of H.R.3824, Should Not Be Enacted

The provisions of Section 2, parts (a) to (c), of H.R.3824 should not be enacted for a number of reasons.

Dealers Can Viably Compete Without Branded Supply Limitations

Ample evidence indicates that dealers do not require a percentage limitation in their branded supply contracts to compete. As indicated earlier, retail margins on full-service gasoline sales rose considerably between January 1981 and December 1983. Yet during that same period, the extra cost of full-service (relative to self-service) as measured by the minimum wage (paid to many service station attendants) remained constant. Thus, the profitability of full-service appears to have risen. Further, while only 25 to 30 percent of all gasoline sales are on a full-service basis, the full-service proportion for dealers apparently is higher.¹ By these data, dealer profit margins for gasoline relative to those for all marketers apparently have been rising.

Differences Between Major Refiner Brand and Other Refiner Brand Prices to Resellers (Distributors and Dealers) Appear Consistent with Differences in Quality and Quality Control Between Classes of Brands

Major refiner brand prices to resellers (both distributors and dealers) average about 1 to 2 cents per gallon higher than

¹ I. R. Fenili, "The Impact of Decontrol on Gasoline Wholesalers and Retailers," Contemporary Policy Issues, Spring 1985, pp. 124-125.

other refiner brand prices for leaded regular gasoline, and 2 to 3 cents per gallon higher for unleaded regular gasoline, as shown in Table 1, appended to this statement.

These price differences reflect quality and quality control differences among brands. In fact, the executive director of the Service Station Dealers of America recently commented in a letter to Consumer Reports:¹

In a Once Over in the April issue, I was quoted as saying that gasoline is "fundamentally the same." At the time, I qualified that broad statement by pointing out the importance of octane rating, which is the measure of gasoline's potency (sic), and quality control, which guarantees gasoline's consistency. I pointed out that both items must be considered when buying gasoline, particularly in light of the rise in imported gasoline and the often undisclosed use of alcohol as an octane booster. Consistent quality control is the main appeal major-brand gasoline has for motorists, even if it costs more.

VIC RASHEED, EXECUTIVE DIRECTOR
SERVICE STATION DEALERS
OF AMERICA
WASHINGTON, D.C.

As the dealer spokesman points out, consumers often are willing to pay slightly higher prices for major brand gasoline quality and quality control. Therefore, open supply legislation likely would not benefit consumers, because any price reductions

1. V. Rasheed, Executive Director, Service Station Dealers of America, Letters section, Consumer Reports, July 1985.

that might occur would come at the expense of quality and quality control that are presently offered to consumers. These points are developed in more detail in the sections that follow.

Gasoline Quality and Availability Could Be Diminished By Branded Supply Restrictions

Branded gasoline marketing involves refiner investment to establish brand-name identification by motorists, and to supply gasoline of stable and acceptable quality of several types over wide geographic regions. Major brand refiners currently supply gasolines meeting their quality specifications to dealers using those refiners' trademarks, and motorists identify the brands with high quality gasolines.

While the bill provides that dealers must give "reasonable notice" that another brand of gasoline also is being sold at a station carrying the trademark of a refiner, the bill would jeopardize both the quality and the availability of particular types of motor fuels sold at stations leased to dealers. The quality deterioration likely would occur because refiners now have incentive to provide high quality gasoline to promote sales at all of the branded stations they supply. In contrast, an individual dealer selling another brand of gasoline has no stake in the effects lower quality of that gasoline might have on other outlets' sales. For that reason, enactment of Section 2 probably would expose motorists to lower average quality gasoline as well as less predictability of quality at any given station.

Moreover, customers today may seek out a particular brand, grade and type of gasoline they believe is especially suited to their cars. Under the 30 percent rule of H.R.3824, it is possible that consumers would drive into a branded station and find that the type of gasoline sought was not available. This would force consumers either to incur additional search costs or to accept a product they did not seek to buy.

Premiums for High Quality Products Are Competitively Determined Returns to Reputation

The small price differences between major brand and other refiner brand regular gasolines shown in Table 1 represent competitively determined returns to quality and quality control, and a reputation for maintaining these characteristics. These premiums are beneficial to consumers, who cannot evaluate gasoline quality prior to purchase. Low quality gasoline can lead to engine knock, stalling in summer, difficult starting in winter, low mileage, and corrosion of engine parts. Such problems would arise only after purchase, and therefore small price premiums for quality and quality assurance are considered worthwhile by many consumers.¹

1. Economic analyses of this phenomenon are contained in two articles, as follows: (1) C. Shapiro, "Premiums for High Quality Products As Returns to Reputations", Quarterly Journal of Economics, 1983, pp. 659-79; and (2) B. Klein and K. Leffler, "The Role of Market Forces In Assuring Contractual Performance", Journal of Political Economy, 1983, pp. 615-41.

The Gasoline Market Reveals Little Demand for Multiple Brands at a Single Outlet

In 1983 the approximately two dozen largest oil companies supplied over 50,000 open contract dealers.¹ The vast majority of dealers who own their own stations choose to sell only one brand, despite the fact that these dealer-owners control the facilities and could choose to sell more than one brand. This evidence suggests that it is neither franchisors nor franchise arrangements, but market demand that determines the typical way in which a retail outlet sells gasoline.

As discussed below, existing law already affords lessee dealers the option to sell unbranded gasoline, while retaining their status as major oil company dealers. Yet few have opted to sell in this fashion, presumably because the possible benefits (in terms of increased sales) do not justify the cost.

Section 2, Parts (a) to (c), Are Unnecessary In View of Existing Antitrust Law and the Bogosian Settlements

Under existing antitrust law, refiners may not forbid their dealers to handle competitive brands of gasoline. Section 3 of the Clayton Act forbids such exclusive dealing agreements whose likely effect is to lessen competition. Thirty-seven years ago the U.S. Supreme Court held (Standard Oil Co. v. United States

1. Performance Profiles, February 1985, p. 50.

(1949) 337 U.S. 293) that the agreements then in effect between the defendant refiner and its dealers requiring them to deal exclusively in the refiner's gasoline and other products violated the Clayton Act. This permitted branded service station dealers to handle one or more additional brands as well, should they desire to do so. Moreover, in the recent Bogosian case, a class action involving a number of large refiners and thousands of dealers, settlements were made that acknowledged this permission to sell other brands in addition to the refiner's brand of gasoline, subject only to the safeguards necessary to assure the integrity and proper identification of each brand. There is no need for further legislation on this subject.

Section 2, Parts (a) to (c), Would Threaten the Viability of Branded Marketing

Major refiners have invested hundreds of millions of dollars in service stations leased as outlets for their branded gasolines. Such investments cannot be justified unless the refiner can be assured that at all times its brand and grades of gasoline will be available at each station to meet the demand for them. While antitrust laws may give the dealer the right to arrange for handling other brands in addition to the refiner's brand of gasoline, the refiner may now insist by contract that his brand and grades of gasoline will always be available at the station.

H.R.3824 would deny this right to refiners. At any time, a dealer would be permitted to use one or more of the pumps (and associated tanks) at the station to sell other brands instead of

the refiner-lessor's brand, to the extent of 30 percent of the dealer's monthly sales. For example, the dealer could devote all pumps at the station exclusively to other brands for approximately one-third of each month, during which time motorists calling at that station would be unable to buy the brand of gasoline represented by the refiner's signs and color scheme. Or, for example, the dealer might continuously devote one of three pumps to another brand with the effect that one of the refiner's three grades of gasoline would never be available to meet the demand for it at the station.

In light of these practical considerations, H.R.3824 would destroy the economic basis for branded service station dealerships. This is contrary not only to the interests of motorists and refiners, but to the interests of the branded dealers whom this bill purportedly protects.

Branded Supply Restrictions Could Reduce the Number of Lessee Dealers

Since this bill undermines a major reason for refiner ownership and lease of branded stations, it would tend to diminish such practice over time, to the detriment of branded lessee dealers. The harm will fall on both existing and new (prospective) dealers, because major oil companies currently are the suppliers who both recruit lessee dealers, and aid those dealers by financing for them the preponderance of the total investment cost of new stations. This potential harm is implicitly recognized by Section 3 of the bill, which provides for federal government financial assistance to dealers. In

addition, refiners subject to Section 2 parts (a) to (c), but not parts (d) to (e) of the bill would have an incentive to expand use of employee (versus dealer) operated stations, contrary to the apparent intent of the bill. On both counts Section 2 likely would lead to a reduction in the number of branded dealers.

Why Section 2, parts (d) to (e) of H.R.3824 Should Not be Enacted

Independent Resellers Remain the Dominant Sellers

According to nationwide Department of Energy data, the approximately seventeen major refiners market only about fifteen percent of their finished motor gasoline through directly operated retail gasoline outlets.¹ In addition, for the twenty-five largest oil companies, less than 10 percent of total outlets are refiner-operated, the remainder being operated by dealers.² Moreover, the refiner-operated stations of the major refiners represent only 3 percent of all gasoline outlets.³ Finally, the four largest oil companies increased the share of their gasoline sold through dealers, from 38.3 percent in 1983 to 41.1 percent in 1984, while reducing the share of their gasoline

1. Department of Energy, Petroleum Marketing Monthly, November 1985, p. 105.

2. Performance Profiles, February 1985, p. 50.

3. Lundberg Letter, "How Many Company-Ops," July 6, 1984, p. 3.

sold through directly operated outlets, from 14.0 percent in 1983 to 11.5 percent in 1984.¹ Thus, the above data indicate that refiner-operated stations are a small proportion of total retail outlets, and that independent reseller operations are the dominant form of retail gasoline marketing for large refiners.

Dealer Claims of Ruinously Low Prices at Refiner-Operated Outlets Are Not Supported by Available Data

Dealer spokesmen have sought retail divorcement on the grounds that retail prices at major refiner-operated stations often are lower than those same refiners' wholesale prices to dealers. No statistical evidence to support such claims has been offered. Table 2 appended hereto provides U.S. Department of Energy data on motor gasoline sales that directly contradict the claim of dealers. That table compares retail prices at major refiner-operated outlets with wholesale prices charged to resellers by those same refiners.

The data used pertained to 50 states (plus D.C.) for the 30 month period January 1983 to June 1985. Although some state/month data were not reported by DOE for various reasons, approximately 1,200 price differentials were calculated. Inasmuch as the data are expressed as price differentials, negative or extremely low values would support dealers' claims, whereas positive and large values would indicate such claims were unfounded.

1. Performance Profiles, January 1986, p. 68.

Table 2 shows that the average price differential in each of the thirty months was positive. Moreover, the average price differentials for each year were roughly 8 cents per gallon. Finally, average monthly price differentials were all above 6 cents per gallon. Figure 1 (also appended) portrays the tabular data in graphic form. As shown, the 1983-84 price differentials have fluctuated, declining in late winter and spring but rising in autumn and early winter. The 1985 data appear to follow the 1983-84 seasonal patterns.

The data in Table 2 and Figure 1 do not support dealer claims. Thus a primary reason often given to justify divorcement lacks factual underpinnings.

Dealers Are Protected by Current Law

A number of statutes already protect dealers against predation or unfair trade practices. The 1978 Petroleum Marketing Practices Act governs contracts between refiners and dealers. In addition, federal and state antitrust laws provide recourse against anticompetitive pricing by refiners. For example, the Robinson-Patman Act prohibits price discrimination that would substantially lessen competition. Section 5 of the Federal Trade Commission Act forbids actions which would be unfair methods of competition.

Academic Studies Have Shown Consumers Are Hurt by Retail Divorcement

Various studies of legislated retail gasoline divorcement by academics have demonstrated that such legislation can be

detrimental to consumers. A study of the Maryland experience (where retail divorcement has been enforced since 1979) by Dr. Philip Sorensen, Professor of Economics at Florida State University, demonstrates that following divorcement the average price rose some 2.85 to 3.86 cents per gallon in Baltimore (a city with divorcement) relative to the U.S. as a whole.¹ In another study, Purdue University Professors John Barron and John Umbeck found that full-serve prices at those stations affected by divorcement "...rose 6.7 cents after a divorcement-induced change to a franchise operation," while the self-serve price "...rose 1.4 cents after divorcement."² Competing stations also had price increases of slightly more than 1 cent per gallon for full-service gasoline.³ Finally, the Barron-Umbeck study found that hours of operation fell by 9 hours per week after divorcement.⁴

Federal Government Studies Have Consistently Found Retail Divorcement Unwarranted

Studies by the Department of Energy in 1981 and 1984 both found that there was no basis for the implementation of retail gasoline service station divorcement.⁵ These studies examined in

1. P. Sorensen, The Effects of Refiner Divorcement on Retail Prices of Gasoline in Maryland, 1979-84, Research report for the American Petroleum Institute, April 1985, p. 15.

2. Barron, John M., and Umbeck, John R., "The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets," Journal of Law & Economics, vol. XXVII (October 1984), pp. 323 and 324.

3. Ibid.

4. Ibid.

5. Department of Energy, State of Competition in Gasoline Marketing, January 1981, and Deregulated Gasoline Marketing, (Draft) March 1984.

particular the claim that refiners had set low (predatory) prices at retail to drive dealers out of business. The DOE studies concluded that even when a variety of empirical tests for evidence of predation were applied, there was no support for the predatory pricing claim. When the DOE Office of Competition was asked in 1981 to respond to a legislative service station divorcement proposal similar to that which is being discussed today, it pointed out that the elimination of competition from the market place would lead to higher gasoline prices than would otherwise prevail.¹ In response to a similar inquiry, James Miller, then chairman of the FTC, indicated that divorcement would only preserve a less efficient distribution system, shielding it against normal competitive forces. According to Miller, those inefficiencies would have to be paid by someone -- most likely the consumer.²

Retail Divorcement Is An Unwarranted Attack on the Long-Standing Dual Distribution Franchising System for Gasoline

Divorcement would prohibit numerous integrated oil companies from simultaneously operating some retail gasoline outlets and supplying other (leased or franchised) outlets. Such an attack

1. Letter from Leonard L. Coburn, Acting Director, Office of Competition to Senator Strom Thurmond, Chairman, Committee on the Judiciary, November 19, 1981.

2. Letter from James C. Miller, III, Chairman, Federal Trade Commission to Senator Strom Thurmond, Chairman, Committee on the Judiciary, November 2, 1981.

on dual distribution is unwarranted for two reasons. First, the existing dual distribution system has provided opportunities for numerous dealers to manage gasoline service stations. In fact, gasoline service stations are the largest line of business in terms of number of franchisee (i.e., dealer) outlets, according to Department of Commerce data.¹ These data also show that:

- o the number of franchisee gasoline service stations is more than double the number of franchisees in business aids and services, the line of business with the second-highest number of franchisees, and
- o the number of franchisee gasoline service stations also is more than quadruple the number of directly-operated gasoline service stations.

Second, dual distribution (or simultaneous operation of some establishments and supply of others) is common in virtually all of the lines of business surveyed by the Department of Commerce. Therefore, an attack on this form of distribution in gasoline is discriminatory and unwarranted, absent evidence of abuse.

1. Department of Commerce, Franchising in the Economy, 1985, p. 27. The number of Franchisee service stations was 130,000 in 1985.

Similar Legislation Proposed in the U.S. Senate Has Been Opposed by the American Bar Association Section of Antitrust Law

U.S. Senate legislation, S.1140, The Motor Fuel Sales Competition Improvement Act of 1985, is similar to H.R.3824. The Section of Antitrust Law of the American Bar Association urged opposition to the branded supply and divorcement provisions of S.1140, as both unnecessary and anticompetitive. These February 1986 recommendations were approved as written by the House of Delegates of the American Bar Association. Similar positions previously were taken with respect to such legislation by representatives of the two federal agencies responsible for antitrust enforcement, the Federal Trade Commission and Department of Justice.

Numerous State Legislatures Have Considered, But Ultimately Rejected, Retail Divorcement Legislation

Retail divorcement legislation was introduced in about 40 states during the era of federal government allocation and price controls on gasoline (roughly the period from 1974 to 1981). Yet today less than a half dozen states have a divorcement law in force, and recently a divorcement law enacted in Florida during the era of controls was repealed. The failure of most state legislatures to enact divorcement legislation indicates that such legislation is not in the public interest.

Conclusions

H.R.3824 would impose restrictions on the sale of branded gasoline by all producers and refiners, and compel divorcement of service stations by major refiners. Both provisions are unwarranted and harmful to consumers. In addition, H.R.3824 may ultimately harm the dealers it seeks to help. Finally, H.R.3824 would re-impose some of the inefficiencies removed by the decontrol of gasoline markets in 1981. For all of these reasons, API strongly opposes enactment of H.R.3824.

Table 1. Average Monthly Differences Between Major Refiner Brand Prices to Resellers and Other Refiner Brand Prices to Resellers, for Leaded Regular and Unleaded Regular Gasolines, 1983-85 (Cents Per Gallon Excluding Taxes)

	<u>1983^a</u>	<u>1984</u>	<u>1985^a</u>
Leaded Regular	1.2	1.4	2.3
Unleaded Regular	2.4	3.2	3.5

a Eleven months. January 1983 and December 1985 data not available.

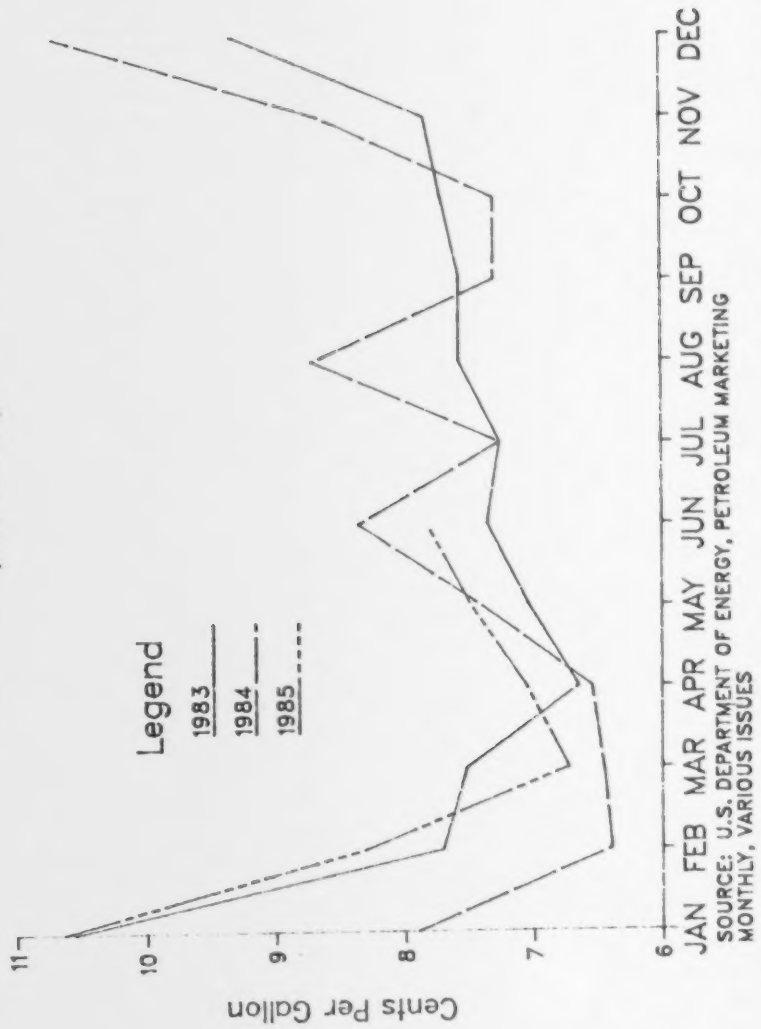
Sources: Department of Energy, Petroleum Marketing Monthly (various issues, and API calculations).

Table 2. Average Price Differentials Between Major Refiners' Retail Prices and their Wholesale Prices to Dealers For the Period January 1983 Through June 1985 -- Motor Gasoline (Cents per gallon)

<u>Month</u>	<u>1983</u>	-	<u>1984</u>	<u>1985</u>
January	10.55		7.89	10.63
February	7.70		6.39	8.31
March	7.51		6.45	6.72
April	6.64		6.54	7.05
May	7.03		7.40	7.48
June	7.35		8.35	7.82
July	7.25		7.25	---
August	7.57		8.70	---
September	7.56		7.29	---
October	7.70		7.29	---
November	7.83		8.64	---
December	9.31		10.19	---
Mean for year	7.83		7.74	8.00

Source: DOE, Petroleum Marketing Monthly, (various issues).

Figure 1
Major Refiner Price Differentials of Finished Motor Gasoline
Between Sales At Retail and Wholesale to Resellers
(1983 to 1985)



APPENDIX D.—ADDITIONAL INFORMATION CONCERNING PETROLEUM MARKETING ACT, SUBMITTED BY PHILLIP R. CHISHOLM, EXECUTIVE VICE PRESIDENT, PETROLEUM MARKETERS ASSOCIATION OF AMERICA [PMAA]



PETROLEUM MARKETERS ASSOCIATION OF AMERICA
1120 VERMONT AVE. NW • SUITE 1130 • WASHINGTON, DC 20005 • (202) 331-1196

April 17, 1986

The Honorable Nicholas Mavroules
 United States House of Representatives
 Cannon House Office Building #440
 Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to appear before the Small Business Subcommittee on Oversight and the Economy on the issue of retail divorcement. As you requested, I am pleased to offer alternative solutions to the problems being experienced by independent marketers and dealers.

Representative Mike Synar (D-OK) and Tom Tauke (R-IA) have introduced HR 2406, Amendments to the Petroleum Marketing Practices Act. This proposed legislation was developed as a result of the combined efforts of PMAA and the Service Station Dealers of America to address the specific problems being faced in motor fuel marketing.

A brief summary of this legislation was included in my prepared testimony. I am attaching a more detailed, section by section summary of the bill as well as a series of questions and answers concerning gasoline marketing generally and HR 2406, specifically. One of the things that this legislation would have allowed is for Mr. Gaeta to purchase his station when ARCU withdrew from the East Coast. It would also prohibit discriminatory pricing practices by franchisors.

As I indicated in my oral statement, the gasoline marketing industry is extremely complex. By necessity, HR 2406 is also complex. I will be more than happy to talk to you or your staff personally about this issue at your convenience.

Thank you again for the opportunity to appear before the subcommittee.

Sincerely,

Phillip R. Chisholm
 Executive Vice President

PRC:cp
 Enclosure

PETROLEUM MARKETING PRACTICES ACTBACKGROUND:

The Petroleum Marketing Practices Act (PMPA) was enacted in 1975 after several years of debate. In its final form, the bill was essentially franchise protection legislation. It was designed to prevent franchisors (refiners and distributors) from arbitrarily terminating or nonrenewing the franchise relationship with franchisees (distributors and dealers).

The term "franchise" is defined in terms of a motor fuel trademark license owned or controlled by a refiner. Leases of real property and motor fuel supply agreements are also incorporated in the definition of a franchise.

The Act spells out conditions under which termination or nonrenewal are permissible and the steps which a franchisor must take either to effect a termination or a decision to nonrenew the franchise relationship (i.e. cause, notification, etc.). In instances where a franchisee feels that a franchisor has failed to comply with the Act, he may bring a civil action against the franchisor. The courts are authorized to grant equitable relief necessary to remedy the violation. A preliminary injunction is to be granted if the franchisee can demonstrate the existence of sufficiently serious questions, going to the merits, to make them a fair grounds for litigation; and the court determines that balancing of the hardship indicates that the hardship suffered by the franchisee if the injunction were not granted would be greater than the hardship imposed on the franchisor by issuance of such relief.

Regarding terminations and nonrenewals, the PMPA also contains a preemption of state law unless the law is "the same as" the applicable provisions of the federal statute.

The Act does not address the issue of the interrelationship of price as a function of supply. On several occasions during the legislative history language was debated relating to predatory pricing policies. The original legislation contained a Title III which prohibited subsidization of downstream operations with upstream profits. That provision was dropped in the House Committee markup, but was retained in a modified version by the Senate Energy Committee. The full Senate deleted Title III and substituted in its place a study of the problem by the Department of Energy.

Clearly, while final language was never approved, the interlinking of price and supply is not a new concept within the parameters of the Petroleum Marketing Practices Act.

NEED FOR AMENDMENTS:

The motor fuel marketplace has changed dramatically since the original enactment of PMPA five years ago. The most significant changes have been brought about by the decontrol of gasoline in 1981. As a result many new problems have begun to arise which could not have been envisioned by the original crafters of the PMPA. In addition there is also a growing body of judicial interpretations which need to be reviewed for their consistency with Congressional intent. As a result, Congress needs to amend PMPA as a means of addressing many of the problems which have arisen since the original enactment.

Independent distributors and retailers of motor fuel occupy a key position in the competitive structure of the petroleum industry. Collectively they move the bulk of the nation's motor fuel. According to industry data, there are approximately 12,000 gasoline distributors and 140,000 retail service station dealers in the United States. These independent businessmen supply the nation with over 75 percent of its motor fuel needs.

The often fierce direct competition among retailers and among distributors presents an obvious benefit to consumers. However, the part these firms play as creators and perpetuators of meaningful price competition between the industry giants at all levels is less obvious, but perhaps their most important role.

However, a combination of practices engaged in by the refiners have limited or inhibited the competitive viability of efficient marketers and dealers. As a consequence, the refiners are able to control marketshare in those markets which they desire to be and can effectively control or limit competition by their franchisee customers.

Further, in some instances where refiners are engaged in dual distribution activities in competition with their own wholesale level customers, they are following policies of discrimination between classes of customers that: (a) artificially limit competition from the refiners' customers for the wholesale or retail market, and (b) shelter the refiners from the ordinary market consequences of their own pricing behavior. Such practices are contrary to consumer interests and require appropriate remedial legislative action.

Specifically, marketers have charged that some refiners have:

- o coerced customer loyalty by threats of termination for failure to purchase minimum quantities of motor fuel;
- o threatened franchise nonrenewal absent distributor or retailer acquiescence to contract terms which limit competition between a refiner and its customers;
- o threatened franchise nonrenewal to force distributors or retailers to accept new contract terms which are harmful to their own interests;

- o imposed discriminatory supply policies;
- o practiced unfair trade practices in refiner pricing among various classes of customers;
- o refused to recognize the small businessman's right to transfer his business to another person or to designate successors in the event of the franchisee's death, disability or retirement; and
- o denied retailers the opportunity to remain in business when options on underlying property leases are allowed to lapse.

To address these problems, Representatives Mike Synar (D-OK), Tom Lauke (R-IA) and some 50 co-sponsors introduced legislation in 1984 (HR 5023) designed to amend the original PMPA and remedy the abuses cited above. Two days of hearings were held on the proposed legislation by the House Energy and Commerce Committee's Fossil and Synthetic Fuels Subcommittee, chaired by Representative Philip Sharp. No additional action was taken.

The principal sponsors reviewed the comments received at the hearing by the refiners and other critics of the bill and introduced a modified form of HR 5023, in 1985. The new bill, HR 2406, attempts to address some of the concerns raised by refiners about the "vagueness" of the previous bill as well as several other important points.

The attached summarizes the specific amendments which are embodied in HR 2406.

SECTION BY SECTION ANALYSIS OF PMPA AMENDMENTS OF 1981SECTION 1: DEFINITIONS

Section 1 of the proposed legislation would amend the definitions section of the existing Petroleum Marketing Practices Act to redefine the term "failure" and to define two new terms used in this legislation: "constructive termination" and "similar motor fuel marketing operations". In addition, standards are provided to define the term "reasonably able to compete."

Definition of "Failure"Provision:

The PMPA currently provides that among the grounds for which a franchisor can terminate or non-renew a franchise relationship is a failure by the franchisee to do certain things (i.e. failure to comply with any provision of the franchise..., failure to exert good faith efforts, etc.) The Act currently defines "failure" in terms of what is not included within the definition of failure. Specifically, the statute provides that any failure which is "either technical or unimportant to the franchise relationship" or any failure for a cause "beyond the reasonable control of the franchisee" is not deemed to be a failure under the act for which termination or nonrenewal is permissible.

The proposed amendment would change the definition of "failure" in three ways. The first change would shift the burden of proof from the franchisee to the franchisor so that the franchisor would have to demonstrate that any failure was within the reasonable control of the franchisee rather than having the franchisee show that it was beyond his reasonable control.

The second change would allow a franchisor an affirmative defense against the "constructive termination" (to be defined later in the Act) of a franchisee on the grounds that the circumstances leading to the constructive termination were beyond the reasonable control of the franchisor.

The third and most important change would be to add language which specifies that failure by the franchisee to purchase a certain quantity of motor fuel designated by the franchisor is not a "failure" unless the franchisor can demonstrate that such quantities were made available at a price which would allow the franchisee to compete with comparable motor fuel marketing operations operated under a trademark owned or controlled by a refiner. In this instance comparable stations are intended to include all other branded stations, regardless of supplier, of a similar type (i.e. full service compared with full service; self service with self service, etc.).

Rationale

This amendment is necessary to address a major problem which has developed since decontrol of gasoline in 1981. Refiner franchisors have terminated or

failed to renew franchise relationships with certain franchisees (jobbers or dealers) on the grounds that the franchisee failed to purchase minimum volumes of motor fuel specified in the contract. Generally, the reason that a jobber or dealer could not purchase such minimum volumes is that those volumes were not offered at a price which would allow the buyer to compete with comparable motor fuel marketing operations. This amendment would not prohibit a refiner from terminating or nonrenewing a jobber or dealer for failure to purchase minimum contractual volumes, except if such volumes had not been offered by the refiners at a competitive price vis a vis comparable stations. Use of the term "comparable stations" is intended to provide for an equitable comparison of goods and services being supplied by competing stations (i.e. full service vs. full service, branded vs. branded, stations accepting credit cards vs. stations accepting credit cards, etc.). In essence, these changes would force the refiner to accept the consequences of its pricing decisions rather than pass those consequences downstream to its jobber or dealer customers. It should be noted in this particular instance, competition is considered to be interbrand. For example, refiner X would not be able to terminate or nonrenew its dealer for the dealer's failure to purchase minimum volumes unless the price offered to that dealer allowed it to be competitive with comparable dealers that may be supplied by refiner Y or Z.

Definition of "Constructive Termination"

Provision:

There is no definition of "constructive termination" in existing law. The PMPA speaks only in terms of what happens in the event of "termination" or "nonrenewal". The proposed amendment would define "constructive termination" and renumber the other definitions accordingly.

Specifically, "constructive termination" would mean three things. First, it would be considered to be a constructive termination if the franchisor failed to make available to the franchisee the minimum amount of motor fuel called for in the franchise agreement. Second, a failure by the franchisor to supply that minimum amount of motor fuel at a price which reasonably enables the franchisee to compete with similar motor fuel operations which are operated by, or for, or supplied by the franchisor is also a constructive termination. Finally, if it becomes necessary to adjust up or down the volume of motor fuel which franchisees are required or entitled to purchase, the franchisor may do so only if it can demonstrate: (a) that the adjustment is applied with proportionate equality to all franchisees within the relevant geographic market area (as currently defined in PMPA) or; (b) if the franchisor is attempting to reduce volumes which a particular franchisee is entitled to purchase then such reduction is permissible only if the franchisor can show the price and terms offered to the franchisee allowed the franchisee to compete with similar motor fuel marketing operations. If the franchisor is unable to make such a demonstration, he could also be charged with "constructive termination".

Unlike the definition of "failure" which is a defense against a termination or nonrenewal by a franchisor, "constructive termination" is an offensive weapon.

which the franchisee may use against a franchisor that is taking certain actions the effect of which is the same as if the franchisee had been actually terminated or nonrenewed.

"Constructive termination" relates only to intra-brand competition between franchisees. For example, requiring the franchisor to price in a way which reasonably enables the franchisee to compete with similar motor fuel marketing operations, would mean only those similar motor fuel marketing operations supplied or operated by that particular franchisor.

Rationale:

The amendment is made necessary by the fact that some refiners will not formally terminate or nonrenew a franchise relationship, but rather, will rely on economic forces to achieve the same objective. This amendment would create a vehicle for the jobber or dealer to bring an action against a refiner in instances where the jobber or dealer is being driven out of business by that refiner's actions during the term of the franchise agreement. First, it would severely limit a refiner's ability to discriminate between various franchisee customers in its pricing policies. Second, it would specify that changes in supply availability must be made with proportionate equality. Finally, a refiner cannot ratchet down or reduce a dealer's or jobber's contractual volumes unless it can show that the reduced volume is based on purchases during a period of time during which its price to the dealers or jobbers allowed them to compete with similar motor fuel marketing operations. Whereas the changes made in the definition of "failure" enhance a marketer's defense against termination or nonrenewal, "constructive termination" provides an offensive weapon for marketers to use.

Definition of "Similar Motor Fuel Marketing Operations"

Provision:

This amendment would specify that the term "similar motor fuel marketing operations" as used in the definition of "constructive termination" would mean the like sale of motor fuel other than by the franchisee under the same refiner owned or controlled trademark which the franchisee is authorized to use.

Rationale:

This definition does two basic things. It establishes the intrabrand nature of the "constructive termination" provision (i.e. Refiner X's franchisees competing with other Refiner X franchisees); and second, it specifies that similar outlets must be like sale (i.e. full service versus full service, self service versus self service).

Standards for Defining

"Reasonably Enable to Compete"

Provision: The phrase "reasonably enable to compete" is used in several sections of the bill. So the intent of this phrase will not be misinterpreted a standard is provided by which to determine whether a franchisor has supplied product to a franchisee at a price which reasonably enables it to compete with other franchisees supplied by the franchisors. Under this standard a franchisee that believes its franchisor is in violation brings a suit against the franchisor. The franchisee has the burden of showing what his purchase price is and what his costs of doing business are. If his costs of doing business plus his purchase price are greater than the franchisor charges another customer for whom the franchisor and franchisee are in competition, then the franchisor is presumed to be in violation of the "reasonably enable to compete" standard. However, the franchisor can rebut this presumption by showing that its costs of doing business are less than the marketer's, thus enabling him to offer the customer a lower price.

An example may be in order. Assume Refiner X has a franchisee X(F). Assume also Refiner X and its franchisee operate competing service stations in a given market and that Refiner X's price to franchisee X(F) is \$1.00 per gallon. At the station it operates Refiner X charges \$1.04 for gasoline. X(F), however, is charging \$1.06 per gallon and believes that Refiner X is in violation of the "reasonably enable to compete" standard. X(F) brings a suit and shows his price (\$1.00 per gallon); he shows his marketing costs (rent, overhead, etc.), and divides it by the number of gallons he sells per month. Assume his costs were \$2,500 per month and he was selling 50,000 gallons per month. His costs per gallon would be \$0.05 per gallon. Thus his buying price plus his costs exceed the price charged by Refiner X. Refiner X would thus be presumed to be in violation. However, Refiner X could rebut this presumption by showing his marketing costs. Assume the refiner's cost per month were identical to X(F)'s; \$2,500 per month. But, also assume Refiner X was selling 100,000 gallons per month. Its cost per gallon would only be \$0.025 per gallon, half of X(F)'s cost. Refiner X would thus be able to show that it could sell to customers at \$1.04 per gallons because of its superior efficiency and would thus not be in violation of the "reasonably enable to compete" standard.

CONSTRUCTIVE TERMINATION OF FRANCHISE RELATIONSHIP; TERMINATION AND NONRENEWAL

SECTION 3:

Section 3 of HR 2406 contains several amendments to the existing PMPA as noted below.

Inclusion of Constructive Termination

In the Statute

Provision:

Subsection (a) of Section 102 specifies that franchisors, except as provided elsewhere in the Act, may not terminate any franchise or fail to renew any

franchise relationship. The proposed amendment would also provide that the franchisor could not constructively terminate a franchise relationship.

Rationale:

This amendment would merely incorporate constructive termination into the operative sections of the Act.

Market Withdrawal: Disposal of Stations

Provision:

SECTION 102 (b) (2) (E) (iii) currently provides that, in the case of market withdrawal, a franchisee shall have the right of first refusal to purchase leased premises. This is in recognition of the fact that a dealer has often built up substantial and valuable goodwill in his station and has a vested interest in his location. However, this right of first refusal is nullified if the franchisor sells the property to another marketer as part of a multistation package and such marketer agrees to continue the franchise relationship on terms similar to those it offers to its other existing franchisees.

The proposed amendment would require that in the case of withdrawal from marketing in a given geographic area, the refiner franchisor shall give the franchisee an opportunity to purchase the leased premises (based upon "a bona fide offer reasonably related to the value of the premises") before the property may be sold or assigned to anyone else. This provision shall not apply in the case of a distributor franchisor that is selling its total branded marketing operation. Such a distributor may at a later time re-enter branded marketing provided such a decision to re-enter was made in good faith and not intended to circumvent the provisions of the Act.

Rationale:

Two problems arise from the current law. First, the franchisee may not find the new franchisor's normal terms to be acceptable. Second, the franchisee may have a problem with the new franchisor's brand. For example, the new owner of the property may be an unbranded marketer, or it may sell a brand that already is in the neighborhood of the franchisee's location.

To remedy these problems, this amendment would give the franchisee a right to purchase the leased premises before the property could be sold to others in the case of voluntary market withdrawal. The only exception would be in the event that a franchisor who is a distributor is leaving the branded gasoline marketing business entirely, in which case all of its branded stations may be sold in a package without the individual franchisees necessarily being given separate options to buy.

Changes or Additions to a Franchise AgreementProvision:

SECTION 102 (b) (3) (A) currently says that a franchisor may fail to renew a franchise relationship if the franchisor and franchisee cannot agree to changes or additions to the franchise agreement, provided that those changes result from normal, good faith business decisions of the franchisor and are not the result of franchisor's efforts to terminate or nonrenew the specific franchisee.

The proposed amendment adds the requirement that changes or additions to a franchise agreement must be "fair and reasonable".

Rationale:

This change is necessary because the courts have interpreted existing law to mean that a franchisor can propose virtually any changes it wants, so long as those changes are imposed upon all franchisees. This applies to specific terms of a lease agreement (such as transferring responsibility for building maintenance or changing required hours of operation) as well as changes in the way in which rent is determined or the terms by which credit is to be handled. Unilateral changes in all of these areas have occurred in recent years, and franchisees have been forced to accept them as a condition of continuing their franchises.

The new language adds the condition that changes in the franchise agreement not only must be made in good faith and the normal course of business, but also must be "fair and reasonable". This is intended to give the individual franchisee some grounds for contesting contract changes that affect him/her directly but are part of a broad company policy.

Station ConversionsProvision:

SECTION 102 (b) (3) currently contains a section which is supposed to govern cases in which the franchisor seeks to make major changes in the franchise property without the consent of the franchisee. For example, some refiners are converting full service stations to convenience stores. A recent court decision, however, has created a loophole, permitting such changes to proceed without regard to those provisions if the lease provides the franchisor with discretion to make major alterations.

The proposed amendment specifies that any changes in a franchise agreement providing for substantial changes to be made in the franchise property by a refiner shall be governed solely by the section of the Act which gives the dealer an opportunity to purchase the station. The amendment also provides that any clause permitting substantial changes to the franchise property shall not be implemented until the end of the period covered by the franchise agreement.

The provision is not applicable to distributor franchisors. This exemption is necessary because of the differing nature of refiner franchisors vs distributor franchisors and the fact that the problem is far greater with refiner franchisors.

Rationale:

At least one major oil company is now requiring all franchisees to grant unilateral authority for making changes in the franchise property as a condition for renewing their leases.

This addition would make clear that discretionary authority for refiners to make major changes in the franchise property during the term of a lease must be governed by subpart D and therefore could not be forced upon a lessee at the time of lease renewal. It also provides that in any leases which contain such discretionary authority, it cannot be exercised until the full term of the lease has run.

The effect of this is that the only way a major change in the lease premises can be made without the consent of the lessee tenant is if the franchise expires or if the lessee is first offered the right to purchase that property and declines to do so.

Avoidance of Competition

Provision:

SECTION 102 (b) (3) (D) specifies that if a franchisor has offered a three-year contract to a franchisee that the franchisor has certain additional grounds available to it on which to nonrenew a franchise relationship. One such ground is a determination made by the franchisor in good faith and the normal course of business that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or additions to the franchise agreement.

The proposed amendment would add a provision which would specify that if the grounds for nonrenewal are that the franchise relationship is no longer economical, then the franchisor must demonstrate that such a determination is not intended to avoid competition with the franchisee.

Rationale:

As gasoline marketing becomes more competitive, it becomes increasingly convenient for a refiner to argue that it is "noneconomic" to continue a franchise relationship with a jobber or dealer that may be competing with the refiner in certain areas. This amendment would prohibit use of the noneconomic criteria unless the refiner's intent is to avoid competition with the franchisee. This is another change in the version of the bill introduced in 1984. Under the previous version, the franchisor could not use the noneconomic standard unless it could show that the noneconomic determination has neither the intent of nor the effect of avoiding competition with the franchisor.

Expiration of an Underlying LeaseProvision:

SECTION 102 (c) (4) currently provides that, in general, a franchise agreement must be renewed so long as the franchisee has met all the requisite terms and conditions. One exception to this rule is the case in which the franchisor is actually subletting a property to the franchisee and the underlying lease expires.

The proposed amendment provides that, in the case of a franchisee being terminated or non-renewed because of the underlying lease on the property expiring, the franchisor shall provide the franchisee 90 days notice of the pending expiration of the underlying lease and provide information to the franchisee as to how the original property owner may be contacted. It also provides that the franchisor shall continue to do business with a franchisee who manages to continue in operation at a location where the underlying lease had lapsed.

Rationale:

There are numerous instances in which the franchisor has voluntarily allowed the underlying lease to lapse (despite the presence of renewal options) and did not provide advance notice of that fact to the franchisee or did not provide the franchisee with information necessary to contact the underlying leaseholder and seek a separate arrangement. Further, there have been instances when the franchisee has actually managed to continue in that property but the franchisor has sought to terminate the franchise relationship on the grounds that the new property arrangement constitutes a new franchise.

This provision would give a lessee advance notice that the underlying lease is expiring or will not be renewed, and it will enable the lessee to seek an independent arrangement with the property owner. It also would assure a franchisee who thus manages to stay at that location that the franchise relationship will be continued and the business thus maintained. HR 2406 is, however, modified over previous versions of the bill and requires only 90 days notice of the expiration of the underlying lease. Previous drafts could have required as much as 3 years notice.

Price EquityProvision:

SECTION 102 is amended by adding a new subsection (e) which specifies that where a franchisor competes with its own franchisees for bulk end user customers, for other end user customers sold under a refiner trademark owned or controlled by the same refiner that supplies the franchisee, or for resale customers, such as dealers, utilizing the same refiner trademark, that franchisor must supply motor fuel to such franchisees in a quantity and at a price to reasonably enable the franchisee to compete with the franchisor.

The burden of proof is on the franchisor to show a lack of competition. The language also specifies that any restrictions the franchisor places on a customer shall not be admissible to show a lack of competition and that with respect to commercial or consumer accounts and refiner supplied retailers within the relevant geographic market area that a distributor and a refiner shall be presumed to be competitors.

Rationale:

One of the most prevalent problems for a marketer is when its refiner supplier offers to sell to a current customer of the marketer at a price equal to or less than the price the refiner charges the marketer. This amendment would require that if a refiner, and a marketer supplied by the refiner, are in competition for a particular customer that the refiner's price to the marketer must reasonably enable the marketer to compete with the refiner. "Reasonably enable to compete" is defined earlier in the bill.

Protection of an Assigned Franchise

Provision:

SECTION 103 (b) (2) currently provides that in those states where local law permits assignment of unexpired franchise rights, franchisors shall honor such assignments. (This language is necessary because the statute otherwise preempts state law.)

The proposed amendment clarifies existing language with regard to the assignment of franchise rights. This amendment would provide that at the end of any trial franchise obtained through assignment of any unexpired franchise rights can be terminated or non-renewed for any of the grounds in the current PMPA irrespective of the time limitations prevalent in the bill relating to three year leases.

Rationale:

Assignments of the franchise by a franchisee have been thwarted by franchisors downgrading the franchise to "trial" status after the new franchisee takes over. Trial franchises do not enjoy the same protections under PMPA as do continuing franchises, and the value of the assignment is therefore substantially reduced. This amendment does not equate trial franchises obtained by the assignment with normal franchise agreements, but does provide more rights than a normal trial franchisee may have.

SECTION 5: ENFORCEMENT

Provision:

SECTION 105 (d) (1) (A) currently gives the court discretion to award legal fees when a franchisee wins a judgment for damages against a franchisor "unless the court determines that only nominal damages are to be awarded."

The proposed amendment would allow the courts to order a franchisor to pay the legal expenses of a franchisee who prevails in seeking final equitable relief.

Rationale:

The most common sort of litigation under PMPA are usually fights over equitable relief. Generally, the courts have been willing to grant temporary or preliminary injunctions to maintain the status quo while battles continue over terms of the franchise agreement. When the franchisee prevails, he/she frequently finds that large legal fees have been incurred just to maintain the status quo. As no damages are awarded, the franchisee has no option for recovering legal expenses.

This provision will give the courts discretion to award legal fees to a franchisee who prevails in a case in which final equitable relief is granted.

SECTION 6: SALES, TRANSFERS AND SUCCESSION

Provision:

The proposed amendment would require the franchisor to grant franchisees the right to nominate successors to the franchise in anticipation of death, disability or retirement. The franchisor shall have the right to reasonably reject a plan of succession and the plan of succession shall be reviewed each time the franchise is renewed.

The amendment would also provide that the franchisee shall have the right to sell or transfer the franchise subject to approval of the franchisor. Such approval cannot be unreasonably withheld.

Rationale:

A successful franchise is often operated for years or decades by the same individual, with family members or close associates also being deeply involved. The franchise acquires significant "good will" value over the years and often constitutes the single largest business asset of the franchisee.

There are numerous instances of franchisors refusing to permit a franchisee's designated successors to continue in the franchise. In fact, several states have enacted laws to overcome this problem.

This provision would require that all franchises include a plan of succession that is devised by the franchisee, subject to the approval of the franchisor and to periodic review. It would also allow the franchisee to sell or transfer the franchise with the approval of the franchisor.

QUESTIONS AND ANSWERS ON H.R. 2406
THE PETROLEUM MARKETING PRACTICES ACT OF 1985

1. Question: What is the Petroleum Marketing Practices Act (PMPA)?

Answer: The PMPA was enacted in 1978 to prevent franchisors (refiners and distributors) from arbitrarily terminating or non-renewing the franchise relationship with franchisees (distributors and dealers).

2. Question: Why does PMPA need to be amended?

Answer: When PMPA was enacted the petroleum industry was in the midst of government controls which regulated the price of gasoline and the volumes a franchisor had to supply its customers. In 1981 President Reagan lifted those controls. Since that time there have been several positive effects. Retail prices have fallen considerably as a result of the increased competition brought on by decontrol. This increased competition has brought on a greater level of efficiency by every segment of the industry, thus meaning that consumers are benefitting from better services at lower prices.

There have also been some negative effects as a result of decontrol. Some refiners have used their superior size and financial resources and their ability to control both the price and supply of their franchisee/competitors to take over the most attractive markets from independent competitors. This has had the effect of limiting competition in certain markets. Many of these problems could not have been envisioned in the control atmosphere of the late 1970's. Thus, PMPA needs to be reexamined with an eye toward the realities of a decontrolled marketplace and the need to preserve fair and honest competition whereby the most efficient marketer survives.

3. Question: Are existing laws not satisfactory in preserving fair and honest competition?

Answer: As pointed out, many problems have arisen in the gasoline marketplace since 1978 which could not have been foreseen in the original PMPA. In addition, the existing antitrust laws provided little relief for independent marketers or dealers. There are many reasons why the antitrust laws are ineffective against the abuses which marketers and dealers complain about most, but the best reason is that marketers as small businessmen, lack the necessary financial resources to attack the world's largest corporate giants in court. These marketers and dealers have also received virtually no assistance from the Justice Department or the Federal Trade Commission which is trying to actually relax certain aspects of the antitrust laws.

4. Question: What does H.R. 2406 do?

Answer: It does several things. First, it amends several of the procedural portions of the Act to make clear original Congressional intent which may have been misinterpreted in the courts. Second, it requires that changes in the franchise agreement at the time of renewal be fair and reasonable. Third, it prohibits discriminatory price and allocation policies by franchisors in their practices with franchisees.

5. Question: Isn't the inclusion of antidiscriminatory pricing policies a new concept in the parameters of PMPA?

Answer: The existing PMPA contains no pricing provisions. However, pricing practices of franchisors was a prominent part of the debate when the original PMPA was enacted. The original House bill contained a provision which prohibited suppliers from utilizing upstream profits to subsidize downstream marketing. That provision was eliminated in committee markup but a similar provision was reported in the Senate Energy Committee's version of the bill. That provision was deleted on the Senate floor and a study by the Department of Energy on the subject was substituted in its place.

6. Question: Will the bill require any new regulations to be issued or any new bureaucracy at DOE or any other federal agency?

Answer: No. The bill requires no new government regulations and does not necessitate any government expenditure. Rather, it gives an individual marketer the chance to bring a private right of action against his supplier if he believes the supplier is in violation of the Act.

7. Question: Will the bill lead to extensive litigation thus tying up the federal courts?

Answer: The bill allows a small businessman to sue his franchisor if he believes he has been aggrieved. In many cases the small businessman is suing one of the largest corporate entities in the world. Because of the franchisor's superior financial and legal resources it is unlikely that frivolous litigation would occur under the provisions of this bill.

8. Question: Critics of the bill have said much of the language was vague and thus open to judicial interpretations.

Answer: H.R. 2406 tries to be more specific in establishing standards for key phrases of the bill than did previous drafts (specifically H.R. 5023 introduced in 1984). However, it would be inappropriate to apply one rule across the board to every situation. Rather, the bill provides flexibility for the courts to make determinations based on specific fact situations. Much of the terminology used in the bill is terminology used in other laws and which has been previously considered by the courts.

9. Question: What impact would the bill have on consumer prices?

Answer: The goal of the bill is to create an environment in the gasoline marketplace which will allow the most efficient marketer to survive. This can only benefit consumers and lead to even lower prices. The alternative is to allow the marketplace to be dominated by a few major oil companies. This would substantially reduce competition and lead to higher consumer prices.

10. Question: Who supports H.R. 2406?

Answer: The two principal groups supporting H.R. 2406 are the Petroleum Marketers Association of America (PMAA) and the Service Station Dealers of America (SSDA). These two groups represent over 70,000 small businessmen who sell over 75 percent of the motor fuel consumed in America today. It is the first piece of legislation dealing with gasoline marketing that the both groups have endorsed.

11. Question: Who opposes the bill?

Answer: The principal opposition comes from the American Petroleum Institute (API) and the major oil companies who argue the bill is anticonsumer. The Department of Energy and FTC have also voiced objections as well as groups representing large unbranded independent marketers. Given recent history it would be interesting to know whether consumers are comfortable with major oil companies, the DOE and FTC representing their interests.

12. Question: Has Congress taken any action on the bill?

Answer: Hearings were held in the House Commerce Committee's Subcommittee on Fossil and Synthetic Fuels in December, 1985.

**APPENDIX E.—ATTACHMENT TO TESTIMONY ENTITLED "OIL FIRMS
ACCUSED OF OVERCHARGING MOTORISTS" SUBMITTED BY JACK W.
HOUSTON, EXECUTIVE VICE PRESIDENT, NATIONAL COALITION OF
PETROLEUM RETAILERS ASSOCIATIONS**

NATIONAL COALITION OF PETROLEUM RETAILERS
ASSOCIATIONS

GEORGIA ASSN. OF PETROLEUM
RETAILERS, INC.
JACK W. Houston, Exec. Dir.
Suite 11
900 N. Main Street Road
Stone Mountain, GA 30083

SERVICE STATION DEALERS
ASSN. OF MICHIGAN, INC.
Charles E. Shupers, Exec. Dir.
Suite 111
24555 Southfield Road
Southfield, MI 48075

NEW JERSEY GASOLINE
RETAILERS ASSN., INC.
JERRY M. Ferrara, Exec. Dir.
66 Morris Avenue
Springfield, NJ 07081

TEXAS SERVICE STATION ASSN.
William H. Ligon, Exec. Dir.
P.O. Box 9445
Austin, TX 78766

May 23, 1986

The Honorable Nicholas Mavroules, Chairman
Small Business Committee
United States House of Representatives
B 363 Rayburn H.O.B.
Washington, D. C. 20515

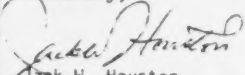
Dear Mr. Mavroules:

Please include the attached article "Oil Firms Accused Of
Overcharging Motorists" in the official record of the April 17th
hearing on gasoline divorcement in the retail gasoline
marketplace.

You will note the UPI story refers to a recently released study by
the Washington based consumer group, Citizen - Labor Energy
Coalition, entitled "The Great Gasoline Stick-Up".

The article confirms my testimony estimating the largest oil com-
panies extracted an extra billion dollars from consumers by
overcharging direct supplied retail dealers - an action that
further eliminated independent (branded and unbranded) retail
dealers from the marketplace.

Sincerely,


Jack W. Houston
Executive Vice President

JWH/vs

attachment: "Oil Firms Accused Of overcharging Motorists"

FULTON COUNTY DAILY

75¢

NEWSPAPER DEVOTED TO THE COURTS AND BUSINESS IN

INCORPORATED 1894

ESTABLISHED 1890

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NO. 94

VOL. 97

TWO SECTIONS

THURSDAY, MAY 13

Oil Firms Accused Of Overcharging Motorists

NEW YORK (UPI) — The eight largest U.S. oil companies overcharged American motorists by \$1 billion during the first three months of 1966 as crude oil prices collapsed, the Citizen-Labor Energy Coalition said recently.

In a study called "The Great Gasoline Slick-Up," the Washington-based consumer group said pump prices "lagged far behind" falling wholesale prices in cities and states where the companies control the bulk of gasoline supplies.

"In contrast, in cities and states where the eight largest companies have a small share of the market, retail prices closely tracked declining wholesale prices," the report said.

The energy coalition said the major oil companies boosted retail prices by charging their own gasoline dealers as much as 30 cents more a gallon than they were charging other customers at their refineries. The normal difference is between 5 and 7 cents a gallon.

Edwin Rothschild, assistant director of the energy coalition, said the hardest-hit cities were Washington, New York, Boston, Miami, Chicago, Houston. He cited pricing by Chevron Corp., Amoco Inc., Texaco Inc., Shell Oil Co., Exxon Corp., Mobil Corp., Atlantic Richfield Co. and Unocal Corp., which sold 52.2 percent of the nation's gasoline in 1964.

He said his group will send the report to Congress and ask for an investigation.

The American Petroleum Institute, the oil industry's trade group, disputed the findings.

Few overcharges occurred in states like Colorado and Montana, where the major oil companies do not have the lion's share of the market, the study said.

"This report demonstrates that where competition exists in the form of independent refiners and marketers, consumers obtain the immediate benefits of lower gasoline prices," Rothschild said. "On the other hand, where competition is limited or thwarted, consumers pay monopoly prices."

The report said motorists on the East Coast and in other markets dominated by the major oil companies could find pump prices rising by at least 5 cents a gallon this summer because refiners have reduced production and inventories prior to the peak driving season.



Business Today

By United Press International

Great Lakes Ports Hoping for Better Business

By BARBARA KUCERA
United Press International

MILWAUKEE (UPI) — Spring brings a note of optimism to Great Lakes ports each year, but this year the optimism is tempered with anxiety as port officials hope they won't run into the same kinds of problems that plagued the 1965 season.

"We had a very tough year last year," said Davis Helberg, port director in Duluth, Minn. "I think the best we can hope for is a moderate recovery."

Shippers on the world's largest freshwater lake system were frustrated by the collapse of a St. Lawrence Seaway lock that led to a six-week shutdown of that crucial link with the Atlantic Ocean.

And they failed to find adequate markets for the glut of grain that American and Canadian farmers had produced.

A 24 percent drop in iron ore shipments to American steel mills hurt ports such as Duluth, while voluntary restrictions on imported steel resulted in fewer shipments to Detroit and other cities that handle them.

Government food aid cargoes, lucrative because they provide jobs for longshoremen and other workers, went up slightly last year, but port directors say such shipments may be endangered because of changes in federal government policy.

Port directors say the lock collapse was a fluke not likely to recur soon.

"Overall we have an excellent safety record," said Dennis Deuschl, communications director for the St. Lawrence Seaway Development Corp. in Washington. "We've only had two major maintenance failures in 26 years."

The lock collapsed Oct. 14 on the Welland Canal between Lakes Ontario and Erie. All traffic through the 2,300-mile seaway was blocked for six weeks, costing an estimated \$30 million in lost trade and employment.

An improved maintenance program, involving a joint U.S.-Canadian investment of more than \$11 million, should prevent such an accident from recurring, Deuschl said.

Although the lock collapse forced shippers to look elsewhere, Great Lakes officials said they do not believe it reduced confidence in the seaway.

This is "certainly an important year to demonstrate a strong recovery and a new place presence," said Jim Hartung, port director in Burns Harbor, Ind.

Recovery hinges on many factors. Grain shipments were hurt last year by the strong dollar. The seaway handles an average of 45 million tons of cargo annually, half of it grain.

"We're hoping this year if grain shipping will turn around, maybe through a combination of intense marketing by both nations," Deuschl said. Tolls were frozen for passage through part of the seaway and went up only 15 percent on the western portion operated by Canada, he said.

Port directors said they expect little improvement in shipments of iron ore from Lake Superior to the eastern steel mills. Shipments of imported steel are projected to increase.

"We import a lot of steel," said Walter Corley, transportation and trade analyst for the Detroit-Wayne County Port Authority. "That is our single largest category. And as long as the auto industry remains healthy, we look good there."

The future of government food cargoes shipped through the Food for Peace program may depend on a lawsuit pending in Milwaukee. Several Great Lakes ports have charged the federal government with yielding to political pressure and illegally diverting the cargoes to coastal ports.

While port officials await the outcome of that case, they were frustrated by a provision in the new U.S. farm bill that requires the majority of aid cargoes to be carried on U.S. flag ships.

That provision will hurt the Great Lakes because most cargoes travel on foreign ships.

"How bad it will be we don't know yet," said John Seefeldt, port director in Green Bay, Wis. "But we can begin to feel the effects already."

The Great Lakes are turning to alternative cargoes in efforts to attract new business.

Duluth Superior, a major grain shipping port, will open a grain-bagging plant later this year.

Green Bay is hoping shipments of wood pulp will generate more traffic.

World Shipping Industry Hopeful Of Recovery

By JONATHAN BURTON
APCN News Service

more affordable to overseas buyers. Shipping lines hope that increased U.S. water

a bullish feeling about trade in general, than

APPENDIX F.—ADDITIONAL ATTACHMENT TO TESTIMONY OF STANLEY A. PATRICK, JR.

Stanley A. Patrick, Jr.
800 Marguerite Road
Metairie, LA 70002

May 26, 1986

The Hon. Nicholas Mavroules
Chairman
U.S. House of Representatives
Committee on Small Business
E-363 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Mavroules:

Thank you for your letter of May 9, 1986 regarding my testimony in the Small Business Oversight Committees hearing April 17 on gasoline divorcement in the retail gasoline marketplace.

Under separate cover as directed I returned the transcript with minor stenographic errors.

You mentioned that if there were any additional comments or information for the record to send this in a separate signed letter. In line with this, I wish to submit the following information:

In the testimony by Mr. Robert C. Larkins, Vice President-Marketing, Exxon Company, U.S.A., he made several remarks that were not in his testimony printed and submitted to you of which I have a copy.

These remarks pertained to me as an individual wherein he mentioned me by name. Of the utmost importance he stated that the station where I was a dealer was not converted into a company-operated station when I left.

In the attached letter to Exxon dated March 27, 1985, from my attorney, Mr. Charles Emile Bruneau, Jr., who is also a Louisiana State Representative, it quite explicitly states in the last paragraph verification of the company operation and pricing statement I made to you.

Also, the letter shows how they treat their dealers. It cost me several hundred dollars in attorney fees to get my just dues.

Mr. Larkin also stated that efficient dealers continue in their operation. Only those not efficient had to leave.

I have a film of the proceedings and therefore, verification of his added testimony.

As a result of this, I feel my comments contained herein to be of prime importance not only as added testimony on my part, but also to point out to you the fabrication of truth in Mr. Larkins testimony and the fact that as such it impugned my character wherein I made a factual statement.

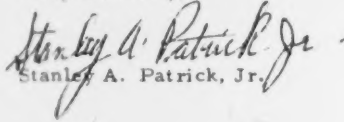
(letter to Congressman Nicholas Mavroules cont'd)

If I was not an efficient dealer it seems strange that I was selected as one of sixteen dealers nationwide in 1978 to Exxon National Dealer Advisory Council.

I would appreciate your including this letter and attachment as part of my testimony. I would also appreciate the eventual passage of the Divorcement Legislation.

Further, I would appreciate your comments relative to this carnage of the truth by Mr. Larkins, and hopefully your relaying this information on to Mr. Winston S. Moore of the F. T. C. who also testified for his perusal and possible action. I certainly can't afford lawyer fees. However, it just doesn't seem right to be economically forced out of a business, then necessitating a lawsuit to recover what is rightfully yours, and then to be ridiculed and lied about - especially to such an August Body as yours.

Very Sincerely,


Stanley A. Patrick, Jr.

cc: Ruth Alahydroian

attachment

SP:srp

NEW ORLEANS, LOUISIANA 70189
 504 482 0094

March 27, 1985

CERTIFIED MAIL-POS 7918754
 RETURN RECEIPT REQUESTED

Mr. Theodore Miller
 Exxon Company, U.S.A.
 Post Office Box 29506
 New Orleans, Louisiana 70189-0506

Dear Mr. Miller:

Please be advised that the undersigned represents Patrick's Canal Boulevard Exxon, Inc.

As a result of negotiations with Exxon and Mr. Stanley A. Patrick, Jr., President of Patrick's Canal Boulevard, Mr. Patrick's lease with you was terminated effective February 28, 1985. The agreed upon consideration was payment to Mr. Patrick of the sum of \$16,514.00 for equipment, and \$14,677.76 for merchandise, cash advances, and pro-rata taxes, for a total of \$31,191.76, subject to a credit of \$124.15 for a credit card return and some Mardi Gras advertising posters, for a net total of \$31,067.61. Payment was to be forthcoming immediately. However, as of this date Mr. Patrick has failed to receive any payment whatsoever. He was recently advised by your sales representative that a check for \$20,000.00 would be mailed to him and he would get the remainder when Exxon was "good and ready". Additionally, your sales representative has advised him that one piece of equipment was not working and Exxon would not pay for the same. I am enclosing herewith a copy of a statement signed by a former mechanic who worked for Mr. Patrick, which is self-explanatory. If your new personnel have broken the equipment, that is in no way Mr. Patrick's fault.

Formal amicable demand is hereby made upon Exxon Company, U.S.A. to pay my client the sum of \$31,067.61 immediately and without further delay. Should you fail to abide by this demand within forty-eight (48) hours of the receipt hereof, I intend to pursue this matter on behalf of my client, not only through a suit for the balance due to him for merchandise and equipment, but also as a result of unfair trade treatment by Exxon. As soon as Mr. Patrick moved out, it was opened ten (10) minutes later by your representative and the prices immediately reduced. This represents an effort to run an independent retailer out of business, which you were successful in doing. Exxon should be ashamed of itself by what it did to Mr. Patrick, especially when he went to its aid in the legislature a few years ago.

Yours very truly,

Charles Emile Bruneau, Jr.

CEBJr/sef

Enclosure

BCC: Mr. Robert E. Brooksher

APPENDIX G.—LIST OF EXHIBITS SUBMITTED BY H. LADDIE MONTAGUE, JR., BERGER & MONTAGUE

LAW OFFICES

BERGER & MONTAGUE, P. C.

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103-6365

(215) 875-3000

TELEX 834-300

TELECOPIER (215) 875-3025

DAVID S. BAKER
 HAROLD BERGER
 H. LADDIE MONTAGUE, JR. **
 WARREN B. MULLIN
 STANLEY R. MULLIN
 JEROME L. SHAWKINS
 SHERRIE R. SHERIFF
 DANIEL BERGER
 JAY ROBERT STOFFEL
 KARY J. CARTER
 MICHAEL J. LAMBLER
 STEPHEN A. BRONSTEIN
 ROBERT F. FRIEDMAN
 MARTIN J. TREESMAN
 ROSS S. COLLINS
 RUTHANNE GORDON
 ALAN H. SARGOLD
 BLANK SCHEIDT THOMAS
 STEPHEN D. BOWEN
 PATRICIA E. FARRELL
 SHARON E. MULLIN
 ANDREW SCHAFTEL ORMAN
 JAMES A. HANLEY
 BENJAMIN A. TOLSON
 ANDY E. LASSON
 DENISE MULLIN
 MARTIN J. STUBBS ***
 LAURIE R. KREBS

*ALSO MEMBER NEW YORK & N. J. BAR
 **ALSO MEMBER D. C. BAR
 ***ALSO MEMBER N. J. BAR

WRITER'S DIRECT
 DIAL NUMBER
 (215) 875-3010

April 18, 1986

Honorable Nicholas Mavroules,
 Chairman, Subcommittee on General
 Oversight and the Economy
 Committee on Small Business
 United States House of Representatives
 B-363
 Rayburn House Office Building
 Washington, DC 20515

Dear Representative Mavroules:

Thank you for the opportunity to appear before you and your colleagues yesterday concerning H.R. 3824. At the conclusion of Panel III, I handed to your staff director a copy of the following documents to be incorporated into the record:

1. The thirteen (13) Bogosian settlement agreements of 1984.
2. Plaintiffs' Memoranda in support of Final Approval of Settlements in the Bogosian case which sets forth many of the factual and legal obstacles encountered in dealer litigation against major oil companies;
3. The District Court's opinion in Bogosian denying the defendants' motions for summary judgment, 596 F. Supp. 62 (E.D. Pa. 1984), which explains the legal and factual issues involved in Bogosian;
4. The District Court's opinion in Bogosian approving the thirteen settlements, 1985-1 CCH Trade cases, ¶66,510 (E.D. Pa. 1985), which identifies the difficulties a dealer faces when litigating against the oil companies.

BERGER & MONTAGUE, P. C.

Honorable Nicholas Mavroules
Page Two
April 18, 1986

5. The Wall Street Journal squibb referred to during my testimony.

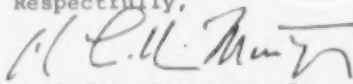
I believe these documents will be helpful to your Subcommittee in understanding the significance of the Bogosian case in relation to the pending proposed legislation and the issues raised at the hearing of April 17.

It may be helpful to include this letter in the record in order to explain these exhibits.

Again, I thank you for the opportunity to appear before your Subcommittee.

With expressions of my highest esteem,

Respectfully,



H. Laddie Montague, Jr.

HLM, Jr. /mrrrr

[The documents referred to are being held in subcommittee files.]

2

APPENDIX H.—ADDITIONAL RESPONSE OF S.L. McDONALD, VICE PRESIDENT, DISTRIBUTION, ATLANTIC RICHFIELD CO.

ARCO Fuel Products Company
 1101 West Broadway Street
 Anaheim, California 92701
 Telephone 213 466 2600

S. L. McDonald
 Vice President
 Distribution

May 22, 1986

Ruth Alahydoian
 Small Business Committee
 8363 Rayburn House Office Building
 Washington, D.C. 20515

Dear Ms. Alahydoian:

In regard to Mr. Mavroules' letter of May 9, 1986, attached, I have made minor changes to the transcript covering the Subcommittee's April 17th hearing on HR-3824.

I also would like the following response placed into the record pertaining to an allegation made against ARCO by Mr. Vic Rasheed of SSDA.

Mr. Rasheed stated, "the latest twist that we have found is in Washington State where ARCO is now charging a franchise fee of \$20,000 to renew a lease. In Washington State, they now have, according to my figures, 39 co-ops and 26 dealers. They eliminated five dealers in one week not too long ago. I believe, I am told another fifteen are expected to fold in ninety days."

Responding to Mr. Rasheed's report of what he had been told, the facts are:

- 1) ARCO charges a franchise fee for a separate and distinct convenience/fast food store franchise. Not only are such fees charged by other similar franchisors, but the fee is not relevant to the Bill under consideration because it is not even a gasoline franchise fee nor is it as Mr. Rasheed stated, a fee "to renew a lease".
- 2) ARCO did not force any franchisees out.
- 3) Mr. Rasheed's statement as to fifteen dealers being expected to fold within 90 days is not correct so far as ARCO knows. There are several franchisees challenging ARCO's franchise fee in a lawsuit but that challenge is not related to a gasoline franchise and, therefore, not relevant to this Bill.

Sincerely,

S. L. McDonald

Enclosures

APPENDIX I.—SUPPLEMENTAL STATEMENT OF EXXON CO., U.S.A.

Supplemental Statement of Exxon Company, U.S.A.
to the
General Oversight and the Economy Subcommittee
of the
Small Business Committee
of the
United States House of Representatives
on
HR3824 - Retail Divorcement
April 17, 1986

As a result of statements made during the April 17, 1986 hearing on HR3824, Exxon submits this supplemental statement for the hearing record to assure that its policies regarding retail pricing at company-operated service stations, market withdrawal procedures, and other practices are correctly described.

Former Exxon Dealer Comments

During the hearing, comments supporting retail divorcement included statements that major brand refiners use company-operated service stations and unreasonable rents to unfairly eliminate dealers from the marketplace. Specific to Exxon, former dealer Stan Patrick indicated he had been forced out when he could not meet his rent which had been doubled from \$2,200 per month in 1978 to \$4,400 per month last year. Mr. Patrick claimed that the station was taken over as a company operation and immediately began pricing 1¢/gallon below his cost. Mr. Patrick's claims are incorrect on some points and misleading on others.

Mr. Patrick mutually terminated the agreement with Exxon effective March 1, 1985. His operation was not in direct competition with any Exxon company-operated stations. Mr. Patrick's rent was about \$4,400 per month when he left the station. However, the doubling of his rent occurred over a seven year period, a rate of increase of about 10% per year during some years of high inflation. His rent during the two years prior to the increase to \$4,414 per month was \$3,829 per month.

Mr. Patrick also did not see the price for regular gas drop to 1¢ below his cost. On the day Mr. Patrick left and Exxon assumed operation of the station, the retail cash price of self service leaded regular was 1.7¢/gal. higher than dealer buying price, and the weighted average of all retail gasoline offerings was 19.8¢/gal. above dealer buying price. Furthermore, the station was operated by Exxon on a temporary basis for only five months to serve customers while a new dealer was being recruited. In August, 1985, a new dealer began operating the station.

Company-Operated Station Marketshare

Exxon markets most of its gasoline through branded dealers and distributors. Less than 10% of Exxon's gasoline sales nationwide are made through company-operated stations. Maintaining a quality brand image

requires the establishment and preservation of a mutually beneficial business relationship between Exxon and its branded dealers and distributors. Alleged efforts to use unfair pricing or inequitable rental tactics to drive out of business branded dealers and distributors on which much of Exxon's success depends is without foundation.

It was also indicated at the hearing that the recent Lundberg Letter dated April 11, 1986, revealed a 7.4% increase in the number of major oil company salaried operations, and the first page of that document was submitted for the hearing record. However, the second page of the article points out that company operations still represent "only a miniscule 1.9% of major-brand stations, . . . up slightly from 1.8% last year."

A statement was also made at the hearing regarding the growth of company operations through 1983, citing the 1983 edition of DOE's Performance Profiles of Major Energy Producers as the reference. The 1984 issue indicates that from 1982 through 1984, dealer operated store volume increased 5.7%, while company-operated store volume increased 2.5%. During 1984, company-operated outlets declined 8.3% in number, while dealer stations declined only 3.8%. The 1984 report noted that for the top four marketers, dealers' share of total gasoline sales increased from 38.3% in 1983 to 41.1% in 1984. At the same time, the share of sales through company-operated outlets of the top four marketers fell significantly, from 14.0% to 11.5%.

Retail Pricing

Independent service station dealers assess competitive factors while considering their cost of doing business and their cost of product to determine their markup, or margin, above buying price. In today's marketplace, price competition is typically the most intense in the sale of self service leaded and unleaded regular grades of gasoline. Accordingly, the margins on these sales are relatively low compared to other motor fuel offerings. An appropriate measure of profitability would consider the weighted average margin for all grades of product and service.

Retail prices at each Exxon company-operated station are established by grade, service, and method of payment to meet prices of key competitors in the trade area. Exxon does not use these stations to set margins of Exxon dealers. Exxon's company-operated station retail prices simply reflect market competition. There have been isolated occasions where Exxon's retail prices at a station have been inadvertently set incorrectly; however, these errors were quickly corrected when brought to Exxon's attention.

The inference in Mr. Patrick's book, submitted for the hearing record, is that Exxon's company-operated stations were pricing below the dealers' wholesale price. The Exxon invoice in the book is dated September 28, 1985. On that date, both Exxon stations pictured in the book were priced above the dealer invoice prices for each motor fuel product offered.

In New Orleans, Exxon operates 31 stations with company employees. These stations are located in the same trading area as 10 dealer operated stations. Currently at 5 of these 10 stations, the posted retail price

for motor fuel offered is below the competing company-operated station. Clearly, these Exxon dealers are not disadvantaged by company operations.

Rent

During the hearing, it was alleged that refiners use excessive rent increases as a means to force dealers out of business, presumably with the intent of securing the service station for use as a company-operated facility. Although we cannot speak for other companies, this is totally unfounded in the case of Exxon.

Exxon relies heavily upon independent dealers for the distribution of its motor fuel and would have nothing to gain by setting rents at unreasonable levels. To the contrary, Exxon strives to negotiate equitable rents and to encourage the success of its dealers. Exxon's rental objective is to achieve an acceptable competitive real estate rate of return, after maintenance and taxes, on the market value of our real property leased to dealers. However, if the business value of the station will not support the proposed rent, Exxon will seek to negotiate a rent which reflects the inability of the dealer's business to support market value rent. Currently, Exxon dealer rents yield, on average, about 8% of the property value. This is much less than the rate of return required by real estate investors.

Some have expressed concern that dealers are not given reasonable notice as to when and what future rent increases will be. Exxon dealer leases, which are for a three-year term, specifically provide the dealer with the maximum amount that Exxon will increase the rent during the second and third year of the lease term. In addition, Exxon dealers are given a copy of the new lease for review in advance of 90 days before the renewal date.

If a dealer believes the rent level would force him out of business, he may make his concerns known to his Exxon sales representative and area sales management and negotiate a mutually satisfactory rental. If a dealer is unable to reach accord over the rental issue with local area sales management, he may seek a review with Exxon's regional sales management and, if necessary, with Exxon's Headquarters management. Lease agreements also provide the dealer with the opportunity to resolve rental issues through an appraisal process. Exercising the appraisal procedure would involve both the dealer and Exxon securing an independent appraisal of the market value of the property. In most cases, the average of the two appraisals would serve as the basis for the new rent. Additionally, a dealer may terminate a lease agreement at any time upon written notice to Exxon.

Marketing Concentration

With decontrol of prices in 1981, some suppliers elected to withdraw from certain markets due to their inability to efficiently compete in a particular area. These withdrawals have not produced any apparent adverse supply conditions. In each case where a withdrawal has occurred, competitors with more favorable economic factors have moved in to assume the business previously conducted by those companies.

Some believe that market withdrawals and recent merger activity in the petroleum industry contribute to a higher degree of concentration in the marketing of motor fuels to the detriment of consumers' interests. We are unaware, however, of any detrimental effect that such activity may have imposed on consumers.

A statement was made at the April 17 hearing that the top four marketers control over 80% of the gasoline market in the states of West Virginia, Vermont, Delaware, and Ohio. A study done by the Energy Information Administration (EIA) and published in Petroleum Marketing Monthly was submitted for the hearing record to support this claim. The statement was apparently made to indicate there is limited competition in the retail marketplace. However, the EIA data submitted as evidence is not an accurate measure of retail competition, since it includes sales at all levels of distribution.

The only reliable indication of concentration at the retail level is tax paid motor gasoline sales. Using this measure, the share of the market for the top four marketers in the four states mentioned ranges from 35% to 58% (based on market share data published by Lundberg Survey Inc.). This indicates that the retail markets in these states are not controlled by a few marketers.

PMPA Requirements on Market Withdrawal

The Petroleum Marketing Practices Act of 1978 (PMPA) specifically addresses the issue of market withdrawal. The decision to withdraw from a market must be based on "occurrence" or acceleration of an adverse trend. The law requires 180 days notice prior to the date of termination and the announcement of the determination to withdraw should be made promptly following occurrence or an acceleration of an adverse trend. PMPA requires the prior offering of a 3 year lease and provides the dealer with the first right of refusal or the franchisor must arrange for an alternate supplier offering a nondiscriminatory franchise.

Current PMPA rules on market withdrawals are, in Exxon's opinion, adequate to handle any problems experienced by petroleum franchisees in these situations. Exxon's experience with market withdrawals in Kentucky, Ohio, Vermont, part of Massachusetts and New York, and more recently, in North Dakota, all indicate that efficient retailers in good locations have no trouble in obtaining a new supplier. Furthermore, what may be a marginal area from which one supplier withdraws, will likely be a profitable area to another. Trade press reports have indicated a healthy interest by many suppliers in acquiring the properties of marketers who withdraw from an area. In Exxon's opinion, potential withdrawal of brands from a geographical area, whether due to a merger or other factors, does not warrant additional legislation. Any constraints which would inhibit the working of marketplace forces in such situations will be to the detriment of efficient marketers and consumers.

Motor Fuel Exchange Agreements

Gasoline is a blend of different hydrocarbon compounds of varying quality that are refined from crude oil. Each gasoline company has its own methods for blending gasoline to sell under its own brand name. The blend includes a proprietary "additive package" of chemicals designed to prevent the build-up of deposits in an engine, guard against corrosion, and boost fuel economy, for example. For these reasons, branded motor fuels are not identical.

Exchange agreements are reached between various oil companies to assure product availability at reasonable prices throughout the marketing geography of the companies. For example, Company A may receive product from Company B in one geographic region where Company A does not have sufficient production capacity, and Company B will be paid back in product made available in another geographic area. However, the product received by Exxon at our exchange points meets our specifications and receives XCL-12 proprietary additive through rack additization before being delivered to our dealers. Exxon does not exchange product which has been blended with any company's additive package. This procedure assures Exxon dealers and customers throughout our marketing areas of the high quality Exxon motor fuel products they expect.

Exxon Company Operated Station in Clark, New Jersey

During the hearing, it was stated that Exxon recently built a company-operated station in Clark, New Jersey within one mile of 12 service stations serving the trade area and with the purpose of running dealers out of business. The need for this company-operated station was questioned by the speaker, since there are so many other stations in the area. The information provided to the Subcommittee is significantly distorted and the accusation is totally unfounded.

The company-operated station referred to was not just recently built, but has been in operation since October, 1981. The station is located in a high traffic, high density area and met Exxon's standard criteria for new investment. On average, 45,000 cars pass this station every day. The average monthly motor fuel sales volume of 110 thousand gallons supports Exxon's conclusion that consumers wanted a station at this location.

There are not 12 stations located less than a mile from the company-operated station that service the same trade area as indicated at the hearing. The company station has seven competitors in its trade area, two of which are Exxon dealer operations. A map submitted for the record is not drawn to scale and can easily lead to inaccurate conclusions. It shows an Exxon dealer station (L & S Exxon) being about four times as far away from the company station as a second Exxon dealer station (Clarkway Exxon); however, both are about one mile from the company outlet. However, due to the difference in traffic patterns and demographics, the Clarkway Exxon station is not in the same trade area as the company-operated station and the two do not directly compete for the same customers.

The claim that Exxon built the company-operated station in Clark, New Jersey to force dealers out of business is totally unsubstantiated. The fact that the station has been open for 4½ years and continues to compete with two Exxon dealers and other motor fuel outlets in the trade area dispels the claim that Exxon built the company station to force independent dealers out of business.

APPENDIX J.—ADDITIONAL RESPONSE FROM AMOCO OIL CO. AND AMOCO CORP. TO TESTIMONY



Amoco Oil Company

General Office
200 E. Randolph Drive
Chicago, Illinois 60601
312 856 5098

Paul D. Collier
Executive Vice President

March 27, 1986

Hon. Nicholas Mavroules
Chairman, General Oversight and
the Economy Subcommittee
Room B 363
Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I would like to submit the attached comments from Amoco Oil Company for the record of your April 7 hearing on H.R. 3824.

I should note at the outset that Amoco has fewer than two percent of our total retail outlets on direct operation. In fact, less than four percent of the gasoline stations in the United States are operated by the major integrated refiners.

Nevertheless, we are opposed in principle to any legislation which would limit a company's ability to market its products in ways it deems in the best interests of its dealers, customers, and shareholders.

The language and intent of this bill also raise other objections. Specifically, the bill fails to recognize:

- Dealers' problems spring from a wide range of sources.
- Refiners and dealers interact and neither can prosper at the expense of the other.
- Refiners themselves are facing many difficulties in the marketplace.
- A strong refinery industry is vital to the U.S. energy supply in the event of another disruption.

Attached is an explanation of each of these points. They are summarized on the first page of the attachment for your convenience.

I would welcome the opportunity to have Amoco personnel meet with you and your staff to discuss these points.

Sincerely,

Paul D. Collier

Summary of
Amoco Oil Company
Position on H.R. 3824

H.R. 3824 assumes the problems of branded dealers would largely vanish if refiners were not permitted to operate stations and if dealers could buy 30 percent of their supply from other sources. It also assumes that branded dealers can achieve prosperity at the expense of their branded suppliers.

Those assumptions ignore these realities in the changing gasoline market:

Lower gasoline demand: Demand is down 10.2 percent since 1978, meaning there are fewer gallons to cover high fixed costs.

Lower prices: Dealers are pricing more competitively to hold their consumer base.

New products: Some companies are competing with more economical alcohol blends. Competition is stronger.

Changing attitudes: Customers prefer self-serve at pumpers and outlets offering ancillary sales and a speedy reentry into traffic. Old customer/dealer relationships are changing.

Changing competitors: Today's repair bay competitor is a chain store like Sears or a heavily advertised specialty house like Midas. Dealers are losing repair bay income.

Changing markets: Many marketers restrict operations to areas offering lower costs and marketing efficiencies. Surviving operators are stronger competitors.

All of these factors result from meeting consumer preferences or Congressional mandates. None of these factors will be changed by H.R. 3824. Major integrated refiners who directly operate fewer than 4 percent of all service stations are not the problem. Refiners also suffer from lower demand and lower margins and new product costs. About 1/3 of all refineries operating in 1981 have closed. Even so, the utilization rate remains only about 77 percent nationally.

In its willingness to impose restraints on major integrated refiners, the bill ignores the likely damage to U.S. product security. At present there is just enough capacity to meet U.S. demand. Further erosion would leave us vulnerable to product embargoes.

Finally, the bill ignores the fact that branded suppliers and dealers are a team. One side cannot prosper long at the expense of the other. Both have an investment in the brand and both need the freedom to keep their investments and marketing strategies abreast of consumer demands. Restricting major branded suppliers while leaving independents, chains, and jobbers free to adjust to market conditions would hurt the very dealers this bill intends to protect and would reduce the refiners' incentive to continue with branded marketing.

H.R. 3824Background on Today's Market

The status of today's motor fuel marketplace is the result of a number of factors:

Changing Demand: Total gasoline demand has dropped by 10.2 percent since 1978 and is expected to remain flat for the foreseeable future. Lower demand and, recently, lower crude prices have led to lower gasoline prices: the average wholesale gasoline price is now below \$.50 versus \$1.04 at the time of decontrol in 1981. If wholesale gasoline prices had matched U.S. inflation since decontrol, they would be at \$1.35 today. The wholesale price is used because it is the accepted industry benchmark.

Lower demand and lower wholesale prices have caused the closing of more than 100 refineries since 1981. Even so, the nationwide utilization rate remains at about 77 percent of capacity. At the same time, the industry has invested \$20 billion in surviving refineries to make them capable of handling a greater range of crude oils and increasing their gasoline yield.

New EPA regulations will call for still further investment if the industry is to replace the octanes lost when lead additives can no longer be used. At Amoco, we have closed three refineries and have spent more than \$1.5 billion to upgrade our remaining facilities since 1981.

The cost squeeze on refiners and the highly competitive market, together with changing regulations such as those on leaded additives, have led to different product slates. Some companies now market methanol and ethanol blended fuels to take advantage of tax subsidies and to offer lower priced products. Lower prices are a boon to consumers but they create still more pressure on an already competitive market and its dealers and jobbers.

Changing Customer Attitudes: Amoco marketing research indicates that consumer buying patterns have changed dramatically in recent years. Today, consumers more often buy according to price, or location, or speed of service, or associated sales in a convenience store. Most are no longer willing to pay for the service of having their gasoline pumped for them. Nationally, the percentage of self-serve sales has risen from about 13 in January of 1975 to 75 today. Price oriented self-serve sales limit dealers' profit opportunities.

Sources of Dealer Ancillary Income are Changing: Competition for automobile repairs and associated tire, battery, and accessory sales has brought heavily advertised chain stores and specialty shops into the marketplace. Department stores such as Sears and J.C. Penney are also offering car repair and servicing in shopping centers. These competitors thrive at the expense of dealers.

Changing Competitors in Gasoline Marketing: Many marketers have withdrawn from certain markets for economic reasons. Some have gone out of business. Dealers and jobbers are no longer supported by artificially high, regulation-generated margins. Surviving dealers and jobbers have reduced unit costs by selling greater volumes and increasing ancillary income opportunities. Refiners, suppliers, and marketers who can't manage costs and still meet the quality and service levels demanded by the public will continue to experience vigorous competition. Some will seek protective legislation.

These are the factors that govern today's motor fuel market. They differ greatly from the expanding motor fuel market of the 1950s through 1978. They differ from the distorted market conditions and artificial margins induced by eight years of price and allocation controls.

These factors have been hard on dealers and jobbers -- but we should remember two things: One, they have been equally hard on ALL other segments of the petroleum refining and marketing industry. And two, they have been working in behalf of the consumer. In fact, the post-control motor fuel market is one of the best bargains the American consumer has today.

H.R. 3824

This bill is an attempt to alleviate the hardships of one group of motor fuel marketers -- the branded dealers -- although this group is suffering no more than any other group in motor fuel marketing. It would alleviate their problems at the expense of the branded refiner supplier -- a group in the industry that is suffering no less than any other part of the refining and marketing industry. Branded suppliers would be the target of this legislation even though they are not responsible for the branded dealer's condition. Yet, it excludes the branded dealers supplied by branded jobbers of the integrated refiner. It also excludes operations of cooperative associations.

While large, integrated refiners are the target of this legislation, it is interesting to note that jobbers have significantly increased their share of the gasoline market and that this increase has come at the expense of dealers. Under the language of the bill, branded jobbers would be free to operate on a salaried basis and to prohibit their branded dealers from selling competitive product. The bill also excludes the independent refiners/marketers and cooperative associations who would remain free to take all operational options.

The bill addresses the disappointments of branded dealers over the out-of-court settlement of the Bogosian case. In that case, they were seeking "open supply" to buy their product from any source, totally ignoring the supplier's investment in facilities, credit cards, advertising and so forth.

The bill also bans large, integrated refiners from operating any motor fuel service station, presumably on the theory that these refiners' operations led to the demise of dealers. But the fact remains that less than four percent of the gasoline stations in the United States are operated by the major, integrated refiners. Moreover, a DOE report concluded that major refiner prices at motor fuel service stations they operate were not predatory or anticompetitive.

The enforcement standards developed over the years in federal case law under the Sherman, Clayton, and FTC Acts, and their remedial provisions, deter firms from engaging in predatory behavior. The majority of salary-operated motor fuel service stations are supplied by jobbers and independent marketers. Yet, they are immune from H.R. 3824 and will continue to apply intense price competition on branded dealers.

While we can understand why some branded dealers might find this protectionist approach attractive, the proposal fails to recognize several important facts: One, it totally ignores a refiner's return on investment. Amoco, for example, has invested more than \$1.5 billion to upgrade its refineries since 1981. Two, the bill threatens credit card operations and presents the possible option of disallowing acceptance of credit cards at those stations that debrand. Three, the bill provides no standards for reasonable notice to the consuming public when dealers sell competitive product. This would prove confusing to the public, and especially so to those consumers who value branded product. Four, the bill allows small and independent refiners, marketers, and cooperative associations the opportunity by law to increase their market share up to 20 percent investment-free, at the total expense of integrated refiners. And five, the bill poses a major disincentive to develop, introduce, and market distinctive products (such as Amoco Premium Lead-Free) when competitive dealers would be free to use our research and development expertise and investment to buy and re-sell these products. This is yet another reason to question the viability of branded marketing.

Contrary to what some hard-pressed dealers and jobbers might maintain, it is not suppliers, but factors such as reduced demand, and changing customer attitudes that are at the root of the problems that H.R. 3824 seeks to address. These factors affect suppliers as much as they affect dealers and jobbers. We sympathize with dealers and jobbers; but we know that legislation which gives one segment of the business relief at the expense of other parts will do more damage than good to branded marketing and to the consumer, who will ultimately bear the costs occasioned by this bill.

The Threat to National Security

In the last three years, one-third of all U.S. refineries have closed. Nevertheless, utilization rates are still only about 77 percent of capacity in the remainder. Many of these refineries were small "teakettles" built to take advantage of Department of Energy rules. But these have all closed, as have a number of efficient, modern refineries. We opened 1985 with industry refinery capacity reported optimistically at 16.1 million barrels per day. By year end 1985, it was down to 15.5 million barrels per day.

The U.S. does have a strategic defense against future supply disruptions. The Strategic Petroleum Reserve could give us some breathing room; but the SPR strategy is based upon a strong refining sector. H.R. 3824 attempts to alleviate some of the market-dictated problems facing certain dealers by placing additional burdens on the refinery sector -- and integrated refiners in particular.

If we become product dependent on a cartel with a history of market and price manipulation, extra SPR crude will not be of much use without the capacity to refine it.

Continued refinery closings in the U.S. could result in insufficient capacity for processing SPR crudes. To the extent that H.R. 3824 threatens the viability of our refining sector, it distorts the efficiency of the petroleum marketplace and increases the danger to our national security.

Some of the problems in H.R. 3824 are based on a distorted perspective of the relationship between branded marketers and their branded suppliers. I would like to briefly outline that relationship at Amoco.

The Amoco Dealer and His Station

Today's Amoco dealer -- leasing a new foodshop pumper station from Amoco -- is gaining control over property and improvements worth between \$500,000 and \$550,000 on average. He is also receiving the benefit of association with a leading gasoline marketer in the U.S. His customers will make over 31 percent of their purchases with the Amoco credit card.

In addition, the dealer will have the benefit of national advertising and marketing programs and the advice of a territory manager whose job it is to help him maximize his profits.

Amoco also conducts dealer-training schools and periodic seminars for our dealers and their employees.

In the event of grievances, Amoco has a written Dealer Relations Policy -- a copy of which is given to every dealer at the time he signs his lease and at each renewal date. All Amoco dealers are routinely represented at Dealer Advisory Council meetings at the district level and at our company headquarters where specific and general matters can be brought to our attention.

In return, the dealer agrees to the terms of the Amoco lease and makes an investment that averages between \$60,000 and \$85,000. That investment covers signs, equipment, and inventory deposits for a typical foodshop pumper. A substantial share of this investment can be recovered should the lease terminate. Similar arrangements exist for the full-service dealer.

We know of no other instance where a businessman going into business can acquire as much for so small an investment on his part. Our terms are fair and reasonable by any comparison with alternative businesses.

Conclusion

Taken at face value, H.R. 3824 would seem to be beneficial to some dealers. But in reality, the bill represents an attempt to insulate one group -- branded dealers -- from the conditions prevailing in a changing marketplace. The bill ignores supplier investment, changing consumer needs, and growing consumer options. In order to insulate the branded dealers, this bill would deprive branded suppliers of normal business options to compete for the consumer's business with the widest possible range of goods and services.

In the long run, the bill will hurt the very branded dealers whose needs the legislation supposedly meets. It will reduce the incentives major branded suppliers have for continuing present operations under these restrictions, while the competition can adapt and adjust to meet consumer wishes.

The competitive marketplace has justified itself with solid pro-consumer and anti-inflation results. These benefits are threatened by legislation that would distort the marketplace by favoring some competitors over others.

Amoco would welcome the opportunity to address the points made in this statement of our position with any member of Congress.

Amoco Corporation

1615 M Street N.W. Suite 201
 Washington, D.C. 20036
 202/657-5300

Robert G. Slaughter
 Washington Representative

May 19, 1986

Honorable Nicholas Mavroules
 Chairman, Subcommittee on General
 Oversight and the Economy
 Room E-363
 Rayburn House Office Building
 Washington DC 20515

Dear Mr. Chairman:

On April 17, 1986, The House Small Business Committee on General Oversight and the Economy held a hearing on H.R. 3824.

In that hearing, Mr. Stan Patrick, an Exxon dealer, submitted that practices such as the use of major oil companies' retail company operations to undercut the wholesale price charged to dealers threatened the survival of service station dealers. In his testimony, he produced evidence of a supplier's dealer buying prices on a given day and then pictures of the supplier's alleged company operated outlet and its advertised pump prices.

In Amoco Oil's case, Mr. Patrick was in error.

Mr. Patrick produced an Amoco invoice indicating John L. Brandt, an Amoco dealer, paid 105.9 for Amoco regular gasoline and 108.9 for Amoco lead-free gasoline on September 25, 1985. Mr. Patrick then submitted an undated photograph of an alleged Amoco Oil company operated facility displaying an advertised pump price of 104.9 and 109.9.

First, in a volatile competitive market, an undated photograph is evidence enough to question the veracity of Mr. Patrick. Secondly, the fact is the Amoco station in the photograph on Loyola Drive in Kenner, Louisiana, has been run and operated by a lessee dealer, A. W. Bishop, on a continuing basis over the past ten years.

Please make this information which rebuts Mr. Patrick's claim a part of your record for the April 17 hearing.

Sincerely,


 R. G. Slaughter

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**APPENDIX K.—PREPARED STATEMENT, WITH ATTACHMENTS, OF SHELL
REFINING AND MARKETING CO.**

Shell Refining and Marketing Company

A Division of Shell Oil Company

One Shell Plaza
PO Box 2463
Houston, Texas 77001

J. W. Schutzenhofer
Vice President-Marketing
Refining and Marketing

April 30, 1986

Representative Nicholas Mavroules
Chairman
Subcommittee on General Oversight and the Economy
House Small Business Committee
Rayburn Office Building
Washington, D.C. 20615

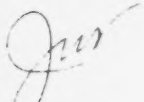
Dear Representative Mavroules:

On April 17, 1986, your Subcommittee on General Oversight and the Economy held a hearing on H.R. 3824, "The Motor Fuel Sales Competition Improvement Act of 1985". Enclosed is Shell's statement regarding H.R. 3824, and some of the charges made at the hearing, which we are submitting for part of the record for the April 17th hearing.

Shell is opposed to H.R. 3824 because we believe it would be highly counter-productive to the dealer class of trade which its proponents claim the bill is designed to assist.

This opportunity to submit these comments for the record is very much appreciated by Shell. Should you desire any further comments or assistance from Shell, please feel free to contact us.

Very truly yours,



Enclosure

As a direct supplier to 4,619 dealer-operated stations in the U.S.A., Shell is well acquainted with all aspects of the two major issues contained in H.R. 3824 -- retail divorcement and open supply. Some of the testimony at the General Oversight and the Economy Subcommittee of the Small Business Committee hearing on April 17, 1986, seemed to imply that there was no future for the small independent dealer in the gasoline marketplace. Shell does not agree with that assessment at all, but instead we believe that dealers will continue to be active participants in the gasoline marketing distribution system for as long as we can forecast.

Ironically, one of the things that could negatively impact the long-term viability of independent branded dealers is well meaning but highly counterproductive legislation such as H.R. 3824. Just as federal price and allocation controls shifted gasoline volume away from the dealer class of trade during the 1970's, the lethal combination of retail

divorcement and open supply could have a similar impact on dealers if H.R. 3824 were to become law. The incentive for a refiner to maintain a branded invested network of dealer-operated stations would be substantially diminished. Many of those stations would wind up being operated by someone other than dealers. Thus, there would be a shift of gallonage away from the dealer class of trade.

Significant changes have occurred in the petroleum industry since 1973 affecting all segments of its business:

- Two rapid escalations of crude oil prices followed by the recent collapse in those prices.
- Two periods of short product supply.
- Almost a decade of federal price and allocation controls, followed by deregulation.
- Federally mandated fuel economy standards for automobiles.
- A substantial decline in the demand for gasoline, resulting in a market-driven restructuring of the entire industry.

Yet, at the April 17th hearing, the proponents of H.R. 3824 suggested that service stations are the only segment of the oil business which has been affected by these changes. In fact, every segment of the petroleum refining and distribution industry (refineries, terminals, pipelines, trucking fleets, stations, and so forth) has been impacted as the industry has had to shrink to live within the reality of reduced demand for petroleum products after almost 30 years of continuing growth and expansion.

Let's look specifically at the two major issues H.R. 3824 addresses -- retail divorcement and open supply -- and at some of the charges that were made against refiners, as well as some of the trends in the industry that were mentioned at the hearing.

Retail Divorcement

Shell is one of the nation's larger gasoline marketers. Almost all Shell gasoline is sold through independent branded dealers and jobbers. In the Shell network there are currently a total of 4,965 stations directly supplied by Shell, and of these stations 346 are operated by Shell as salary units. In addition, there are another 6,164 branded Shell stations supplied by jobbers. Although salary-operated stations represent a small percentage of Shell stations, they are an important marketing concept for Shell. The relatively few company-operated stations that we have serve a legitimate purpose in gasoline marketing. They make a significant contribution in putting Shell's best image forward to potential customers, and have been successful in attracting customers to the Shell brand. More Shell customers help all Shell stations, whether salary-operated, dealer-operated, or jobber-operated.

During the Subcommittee hearings the charge was made by the proponents of H.R. 3824 that refiner operated stations were taking over the sale of gasoline at the retail level. It was claimed that the presence of these

refiner stations, coupled with alleged subsidization of these units from refining or crude oil profits, were significant factors in the decline of the number of dealer-operated stations.

Shell views these charges with great skepticism. First of all, the percentage of stations operated by the 14 largest refiners, as reported by the July 19, 1985, Lundberg Letter, has remained relatively constant for the past three years (1983, '84, '85) and over this period has represented only about 3 to 4% of the total service station population. Although it is true that these stations typically sell more gasoline than the average dealer-operated station, by any objective measurement they hardly control the retail marketplace.

There can be little doubt that the number of dealer-operated stations would have declined substantially over the past decade whether or not there had been any refiner-operated stations. As stated previously, the industry has had to decline in size to adapt to the present and projected shrinking levels of demand for oil products. These changes in demand caused the economics of petroleum refining and marketing to change also. Greater efficiency was necessitated in all phases of the business, including at the retail station level. As a result, the total number of retail gasoline stations was bound to decline regardless of the presence of refiner-operated stations in the market. Actually, a small core of well-run company-operated stations can help dealer-operated stations by demonstrating how greater efficiency can be obtained.

Also, while proponents of retail divorcement have sometimes charged that refiner-operated stations are being subsidized by upstream operations, the actual facts indicate something else. The Department of Energy published reports in both 1981 and 1984 which concluded there was no evidence of subsidization at the retail level by refiners. These proponents of retail divorcement will sometimes also present evidence that on a given day a refiner-operated station may be selling a given grade of gasoline at or near dealer wholesale cost. The statement is then made that it is impossible for a dealer to compete against this "unfair" competition. During the past several years retailers of all types, including dealer and jobber outlets, have sold one or more grades of motor fuel at or near cost to meet local competitive conditions in the marketplace. When this approach is used, then one or two of the other grades of motor fuel have to have a sufficient markup to offset the reduced price on the lower-priced product. This has resulted in retailers looking at their average profit for all three grades of fuel versus looking solely at their profit on each grade in isolation. Therefore, a retailer of any type could be selling a grade of fuel at or near dealer cost and still have an overall margin large enough to cover operating expenses and generate a reasonable profit. Any charges of below cost sales or subsidization have to be examined in the light of all the facts, not just part of the facts.

While Shell can't speak for other refiners, Shell has no intention of "subsidizing" salary station operations nor of operating salary stations at a loss.

Open Supply - Consumer Concerns

Despite some of the testimony given at the April 17th hearing, open supply is not as simple as it seems. If open supply is combined with retail divorcement as H.R. 3824 would require, it can have far-reaching implications for both refiners and dealers. So-called open supply also presents a number of problems that have historically not been considered when discussing this issue. As currently drafted, Section 2 of H.R. 3824, which is titled "Amendment to Clayton Act Regarding Distribution of Gasoline", would make it more difficult for local, state and federal governmental agencies to enforce consumer protection, health, and environmental standards involving gasoline marketing. If section 2 were enacted, in Shell's opinion it would lead to increased adulteration and commingling of gasoline in many of the major metropolitan areas where refiners' dealer-operated stations are located. The much publicized problems which occurred last year in the New York metropolitan area illustrate what could happen, as well, in other markets around the country.

The consumer has the right to be protected from deception, mistake, or confusion, but with Section 2 of H.R. 3824, there would be an increased chance of product adulteration or commingling. In the event of a product quality problem, the consumer would have difficulty identifying the culpable manufacturer. A motorist pulling into a Shell station expects to purchase Shell gasoline, with the product and performance characteristics

and consistency associated with the Shell brand. Under the provisions contained in Section 2, that assurance would no longer be possible.

Not only does open supply have implications for consumer protection, but it also raises serious questions for a branded refiner/marketer regarding the long-term viability of branded marketing. If mixing of gasoline from various manufacturers in one storage tank became widespread, suppliers would lose the ability to assure the quality of the product sold under their trademark. There would be little reason for a refiner to advertise or promote the brand. The incentive for a refiner to maintain an invested service station network would vanish. Although some dealers might prosper in such a situation, others wouldn't. Especially hard hit would be dealers such as minorities, women, and younger dealers who historically have less money to invest in a small business. Even with the SBA loan provisions in H.R. 3824, many dealers could not afford to purchase the stations they now lease. Some of these dealers would not be able to continue as independent small business people.

A combination of open supply and retail divorcement would cause many refiners to divest from their invested station networks making even less opportunities available for dealers to operate gasoline stations. For anyone to really believe that the majority of these stations would wind up as refiner branded and supplied dealer-operated units is simply wishful thinking.

Certain court and enforcement agency orders and rulings, some of which were referred to in the testimony given at the April 17th hearing, have

dealt with the issue of open supply. In doing so, they have provided a balance of the dealers' rights with the rights of consumers and refiners. This balance is lacking in H.R. 3824.

Current Trends in the Industry

Dramatic Drop in the Price of Gasoline

Since the first of this year there has been a dramatic drop in both the price of crude oil and the wholesale price of gasoline across the United States.

The decreases in wholesale-gasoline prices did not occur uniformly but were in response to competitive market prices. As a result, differentials between dealer and jobber prices during the first quarter of 1986 were greater than has normally been the case. These dealer/jobber differentials constantly change, and the variations are sometimes greater when prices are either rapidly moving up or down. Dealer wholesale prices typically tend to fall slower in falling markets than jobber wholesale prices and, in turn, also tend to increase slower during periods of increasing prices.

Contrary to some of the testimony at the April 17th hearing, it is Shell's belief that, with the exception of isolated situations, most dealers were not adversely affected by these differentials. In fact, some price surveys taken during the time period involved show that many major-branded dealers' margins actually improved.

Market Withdrawals - Shell Acquisitions of ARCO Stations In The Northeast and Mid-Atlantic States

In mid-1985 ARCO announced a market withdrawal from all geographical areas east of the Mississippi River. Shell Oil Company entered its bid and ultimately negotiated the purchase of a package of some 355 service stations from ARCO located in New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, District of Columbia, and Virginia. In that package of stations, acquired in late 1985, were a number of successful locations, as well as a number of stations of marginal value to Shell.

Based on the availability of the total package, Shell was willing to make a long-term commitment to the geographical area involved. Shell offered the former ARCO dealers three-year leases and committed itself to the potentially long-term supply and contractual obligations required by the Petroleum Marketing Practices Act (PMPA). Shell has initially earmarked in excess of \$40 million for new equipment, various modernizations and rebuilds to bring these stations up to Shell's operating standards.

When Shell acquired this group of 355 stations, 67 were on salary operation; however, since that time the number of those stations on salary operation has been reduced to 47 and additional conversions to dealer operation are anticipated. In spite of the insinuations made at the hearing, not a single ARCO dealer has been "forced out" to convert a former dealer-operated station to salary operation. In testimony it was

also mentioned that some ARCO dealers would have liked to see ARCO stay as their supplier because they allegedly preferred ARCO's policies to Shell's. Understandably, change is often unwelcome and Shell cannot blame any dealer for not wanting any change at all. However, Shell believes that over time it will be able to show it was a good change for most dealers.

Although it is true that there are some former ARCO dealers who would have preferred to purchase their own stations and convert to private brand operation, we feel these dealers will benefit from the acquisition by having a new supplier with a long-term interest and commitment to the geographical area. That commitment, coupled with Shell's financial resources and proven marketing track record, should make these dealers' businesses even more valuable over the long term.

Role of the Small Independent Dealer in the Gasoline Marketplace

Shell is one of the five largest marketers of motor gasoline in the U.S.A. In spite of the shakeout currently taking place in the refining industry, based on its financial position, market share and commitment to branded marketers, Shell is planning for and expects to be one of the survivors and to remain a competitive major supplier of transportation fuels for the distant future. Shell dealers presently sell over 90% of the directly-supplied gasoline Shell markets. Shell is committed to using dealers to market Shell products. During the past 5 years, Shell has trained and installed an average of over 400 new dealers each year.

The charge was made at the hearing that dealers had no future in gasoline marketing because no newly-built stations were being leased to dealers. That charge simply isn't true in the case of Shell. For example, during the 6-year period from 1978 through 1983, Shell put onstream 365 new-to-industry and newly-rebuilt stations. As of the beginning of last year, over 70% of these stations were being operated by dealers. Barring some unknown and unforeseen event, such as H.R. 3824, Shell sees no reason why dealers wouldn't continue to play a significant role in the marketing of Shell branded motor gasolines for as long as Shell can forecast.

Conclusion

Shell is opposed to H.R. 3824. Although its sponsors may sincerely believe it will solve the problems presently facing the dealer segment of the gasoline marketing distribution system, Shell believes it is bad legislation and will have just the opposite effect. No convincing evidence has been presented showing that refiners are taking over the retail gasoline market, or that the declining number of dealer-operated stations has been caused by an increase in refiner stations. As mentioned earlier, Shell relies heavily on its outstanding dealer network to sell the majority of its branded gasolines. Shell believes the economic well-being and viability of those customers is essential to its marketing success. Shell has no plans to eliminate that segment of its station network which is presently run by dealers and jobbers in order to operate on a salary basis. If, on the other hand, H.R. 3824 were to become law, the Shell

brand, which has helped make many of our dealers to become successful, would be weakened and the incentive for maintaining an invested dealer network would be greatly diminished. This, in turn, would result in fewer business opportunities for small business people.

Before acting on H.R. 3824, the members of the Subcommittee should study carefully all of the issues involved and look in detail at the retail gasoline marketplace and the various competitive elements which would be affected. Although we expect competition in a free market environment to remain active, there are still ample opportunities for small independent dealers.



Shell Oil Company
400 Blue Hill Drive
Westwood, Massachusetts 02090

March 20, 1986

PERSONAL DELIVERY

and

CERTIFIED MAIL #P06 0941862

RETURN RECEIPT REQUESTED

Mr. Mathew G. Gaeta, President/Treasurer
Gaeta Enterprises, Inc.
14 Newburyport Turnpike
Peabody, MA 01960

Dear Mr. Gaeta:

SUBJECT: NOTICE OF VIOLATION
MOTOR FUEL STATION LEASE
AND DEALER AGREEMENT
BOTH DATED AUGUST 27, 1985
STATION LOCATION: 14 NEWBURYPORT TURNPIKE
PEABODY, MASSACHUSETTS

Please refer to the Motor Fuel Station Lease ("Lease") dated August 27, 1985 between you and the Shell Oil Company ("Shell") covering the station located at 14 Newburyport Turnpike, Peabody, Massachusetts, ("Premises") and Dealer Agreement ("Agreement") of the same date between you and Shell covering the sale and delivery by Shell of Shell products to you at said Premises.

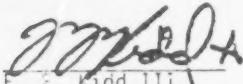
We call your attention to Article 11.1(f) of the Agreement which requires that the Premises shall be kept clear of vehicles and other obstructions which may restrict traffic flow, endanger customer safety or detract from appearance. This article further provides that your station may not be used for the selling, leasing, parking or storing of motor vehicles and other mobile equipment. It has come to our attention, as you are well aware, that you have been parking and storing automobiles for a fee at the Premises. These automobiles were not placed upon the Premises for the purpose of repair work.

It should be emphasized that such obligations are made a part of your Lease and Agreement so that you may better serve your customers. We therefore request that you contact your Shell representative so that appropriate steps to correct this situation can be taken immediately. Failure to correct this matter by April 19, 1986, may result in termination of your franchise relationship.

We are attempting to accommodate your business needs in this regard, and have given you a greater amount of time to cure this violation than we consider necessary. We have formalized our position by sending you this notice, but we do so in a spirit of cooperation and with a sincere desire to work out an arrangement which is to our mutual benefit. As you know, we intend to rebuild this unit into a modern and efficient service station as soon as we have permits to do so. The removal of your vehicle storage operation from the Premises is an indication of your good faith to join us in a cooperative manner.

You are requested to acknowledge receipt of this notice by dating and signing both copies of this letter in the space provided below and returning one copy to us in the enclosed return envelope.

Very truly yours,



F. F. Kidd III
District Manager

Enclosures

RECEIPT HEREOF IS ACKNOWLEDGED
AT _____ (am) (pm)

THIS _____ DAY OF _____, 1986

Dealer/Lessee

cc: Myles Jacobson, Esq.
33 Sleeper Street #102
Boston, MA 02110

APPENDIX L.—RESPONSE FROM CHEVRON U.S.A., INC., AND PREPARED STATEMENT

Chevron



Chevron U.S.A. Inc.

1700 Market Street, San Francisco, CA 94102

Marion M. Smith
Vice President
Marketing

May 13, 1986

The Honorable Nicholas Mavroules
Chairman of the Committee on Small Business
Subcommittee on General Oversight and the Economy
363 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Mavroules:

Chevron has reviewed the book Stan Patrick of the gasoline dealers' panel submitted for the record during your committee hearings on H.R. 3824 on April 17. We understand this material was submitted as evidence that New Orleans refiner-operated service stations sell at retail below their dealers' costs.

Two pages in the book involve Gulf stations, for which Chevron now has responsibility. One page consists of an invoice showing the Sept. 22, 1985 wholesale gasoline buying price of New Orleans Gulf dealer Robert P. Clark's station at St. Charles Avenue and St. Andrew. The invoice's presence in the book implies that the Clark station is a lessee-dealer outlet that is in competition with a company-operated station.

The other page consists of two photographs. One photograph shows the street price postings of a Gulf station at the corner of De Gaulle Drive and Sandra in New Orleans. The other photograph is of a Gulf service station under construction at De Gaulle and Florence. This station, which is company-operated, opened on November 25, 1985.

No conclusions can be drawn from this material for the following reasons:

- 1) The invoice is dated Sept. 22, 1985. We are told the photograph of the station at De Gaulle Drive and Sandra was taken October 1, 1985. Accurate comparisons can only be made when an invoice and evidence of posted prices bear the same date.
- 2) The station at De Gaulle Drive and Sandra has been a Gulf company-operated station since March 19, 1986. However, the picture in Mr. Patrick's album was taken before that -- when the station was a lessee-dealer station. We draw this conclusion based on the fact that it is exactly the same photograph as submitted to the Senate Judiciary Committee on October 9, 1985, when the committee held hearings on S.1140. The album Mr. Patrick submitted to the Senate Judiciary Committee indicated that this particular photograph was taken on October 1, 1985.
- 3) The Clark station at St. Charles Avenue and St. Andrew, for which Mr. Patrick submitted an invoice, is not a lessee-dealer station -- it is a dealer-owned station.
- 4) The dealer-owned station of Robert P. Clark is not in competition with either of the company-operated Gulf stations. The Clark station is 6 and 6½ miles from the Gulf

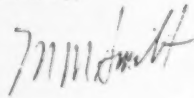
company-operated stations, and is on the opposite side of the Mississippi River from them. Even if all other factors pointed to possible below-cost-selling, their locations would preclude any meaningful conclusion.

- 5) Fears of predatory pricing or below-cost selling are normally voiced by lessee dealers -- not dealers like Robert Clark who own their own stations. If an owner-dealer such as Mr. Clark doesn't like the prices Chevron charges him, he is free to drop the Gulf brand and buy gasoline from a supplier who will give him a better deal. There is nothing in Mr. Patrick's photo album pertaining to Gulf lessee dealers.

Sir, it is our opinion that the information in the dealers' book pertaining to Gulf has been misrepresented to you and the House Small Business Subcommittee on General Oversight and the Economy. The information has been presented to you as evidence that Gulf company-operated stations in New Orleans are selling below their dealer's costs. However, the information submitted by Mr. Patrick does not show this to be true.

I am grateful for this opportunity to set the record straight and would be happy to provide any further assistance you may need.

Sincerely,



Different companies have different ways of looking at Marketing. This statement reflects the views of Chevron U.S.A.

H.R. 3824 deals with two major subjects -- open supply and divorcement. Chevron is strongly opposed to both provisions of the bill. The open supply provisions would permit confiscation of Chevron facilities and destruction of Chevron's valuable brand name. The divorcement provisions would prevent most of the country's refiners from operating their own retail service stations.

For the last ten years, Legislatures throughout the country have been asked to consider special legislation proposed by various dealer organizations, often without the support of the dealers they say they represent. In 1978, you passed the Petroleum Marketing Practices Act, a dealer bill of rights. Now you have been told that if you pass this bill, problems dealers have in a competitive market will be resolved.

Chevron is convinced this bill, like most attempts to regulate a free market, will make matters worse -- not better -- for those very dealers the proponents of this bill are attempting to protect.

For the record, Chevron is totally opposed to divorcement. But, in the interest of brevity and to avoid redundancy with studies and papers you have already read, Chevron's statement will focus on open supply.

In Chevron's view, the open supply provisions represent a legislative attempt to obtain for dealers all the benefits of branded marketing without the cost or responsibility of providing a supplier's branded products to the consumer. Over the past 75 years in this country, branded marketing through service stations has developed because it offers:

- o Consumer benefits
- o Retailer benefits, and
- o Refiner benefits.

Chevron's system of branded stations is now threatened by a provision, however well-intentioned, that says a Chevron dealer must buy only 70% of his gasoline under the Chevron brand but has the right to continue to represent himself as a Chevron dealer.

In many states and, indeed, federally, there has been a great deal of controversy about open supply, primarily, in our judgment, because open supply is not understood. In the United States today, there are hundreds of thousands of retailers of gasoline.

- o Some sell under their own brand name, and most often own all their own facilities.
- o Other retailers sell under a major brand, such as Chevron, and also own their own facilities.
- o Still others lease their premises from refiners, such as Chevron, and have no capital investment in the land or facilities.

The first two categories of retailers have invested their capital in their land and in their buildings and choose to market either under their own brand or the brand of a major supplier.

The third category of dealers who lease their stations align themselves with a company, such as Chevron, because they elect not to invest in service station land and facilities. And, they view the brand package offered by their supplier as being sufficiently competitive to allow them to be viable marketers at their locations as lessee dealers.

It is critical that we focus on this last group -- the group purportedly represented by the proponents of this bill. The proponents are saying to you that dealers want to continue to have all the benefits they currently enjoy with the brand but be allowed to sell someone else's gas 30% of the time through the supplier's facilities.

Many open supply bills have been introduced in various legislatures around the country. To our knowledge, they have all been defeated primarily because branded lessee dealers -- not sharing the view of their associations -- have spoken out against open supply. And, it is important that you know why these branded dealers continue to oppose open supply.

These dealers are businesspersons -- they understand perhaps better than many of us the values inherent in branded marketing to them and their customers. These dealers recognize the threat that open supply poses.

Branded contracts with Chevron give Chevron dealers the assurance of quality products and a stable source of supply. In addition, Chevron dealers enjoy the benefits of a well-known credit card, training programs, extensive advertising and a host of other services not available to the unbranded dealer. The vast majority of Chevron dealers do not want to jeopardize these benefits and that's why they oppose open supply.

Now, let's look at it from the consumer's standpoint. Consumers today have many choices as to where they buy their gasoline.

They have dozens of major brands nationally from which to choose. Those choosing to buy at a Chevron station do so because they like the product, they see its value and they protect their car investment with the assurance of quality fuel backed by Chevron's willingness to stand behind its Chevron gasolines.

Once the brand disappears, the consumer would lose these benefits and other benefits customarily associated with the brand, such as the supplier's credit card, product warranty and regionally consistent automotive products.

Chevron invests in service station brand marketing because it gives us a reliable outlet for our petroleum products and supports our sensitive balance for the total production from Chevron refineries. Refinery output goes not only to autos but to railroads, airlines, farmers, homeowners, and truckers. If Chevron gasoline sales to its Chevron dealers are jeopardized, there is no reason for Chevron to continue its branded marketing and that will seriously hurt Chevron dealers.

The open supply provision in this bill (and the parallel bill in the Senate) is far different from any other open supply bill we have ever seen. And, we think it is important that you understand why this bill is so onerous.

Chevron dealers have had the contractual right since 1949 to make their own investment in storage and dispensing facilities for the sale of non-Chevron gasolines. In doing so, they have to make their own investment and have to assume all the responsibilities for the

facilities and products that Chevron normally assumes. Dealers have not exercised that contract right -- not because of the arguments you hear from the proponents but because of the financial investment, the risk and the uncertainty of consumer response.

This bill, however, would permit the dealer to take one of the supplier's tanks and convert it solely to someone else's gasoline. What it says to the customer is: When you go to a Chevron station, you may no longer find the Chevron product you have regularly used in your automobile. Additionally, with the 70% requirement, a dealer could choose to convert all of his gasoline facilities for ten days out of the month to the sale of someone else's gasoline. During that time, not a drop of Chevron gasoline would be available for sale at a Chevron station.

The open supply provisions of the bill would create a whole series of insurmountable problems:

- o The serious risk of consumer deception,
- o The likelihood of commingling,
- o The potential loss of trademark rights,
- o Liability for the sale of defective gasoline,
- o Establishing responsibility for gallonage rentals to land owners, and
- o The problems resulting from using tanks at the station for different kinds of gasoline.

Let's take up the serious problem of consumer deception: A supplier's brand or hallmark is what brings many customers into the station. Under this bill, customers might not find any Chevron product available or might not get the product they drove in to buy. In other words, they would be the victims of a classic "bait-and-switch" scheme.

Faced with this situation, some customers may take their business elsewhere. Others may decide to buy the non-Chevron product offered at the station. However, there would be no guarantee of quality and no supplier available to stand behind the product.

It seems highly unlikely that the quality of the non-Chevron product would be consistent. It could be "Joe's Gas" one week, "Mike's Gas" the next and some other product the week following. On some occasions, the dealer might use the tank for Chevron's branded product. If the customer has a problem, you can be sure he or she will demand satisfaction not only from the Chevron dealer but also Chevron, whose flag flies at the location, regardless of whose gasoline the customer actually got.

This would be just the beginning. With non-Chevron product coming into a Chevron station, it would be virtually impossible to establish responsibility for distribution under Chevron trademarks; product quality and warranty; and the highly sensitive environmental controls.

This bill assumes products will not be illegally commingled. However, the provisions of the bill would bring about a set of circumstances under which product integrity could not be monitored effectively by Chevron or the various governmental agencies with responsibilities in this area. Two areas of major concern for continuous monitoring are lead content and octane ratings. Again, the question is: Who will be accountable on a continuing basis?

From a supplier standpoint, there are many problems with open supply. Chevron uses trademarks that are recognized and protected under Federal and state laws and Chevron has an affirmative duty to prevent misuse of the mark. If there is commingling at pumps where Chevron products are sold, the public would clearly be misled. If non-Chevron motor fuels are sold from Chevron's dispensing facilities which are normally used for Chevron products, the motoring public could also become very confused and perhaps misled into buying a non-Chevron gasoline with the intent to purchase a Chevron product. As a consequence, Chevron's trademark rights could be placed in jeopardy.

The notice requirements of H.R. 3824 are very limited. Dealers owning their own stations who fly the Chevron flag are not required to provide customers with notice that some other supplier's products are being sold. Even if this problem were remedied, we do not think the notice requirements would be enough to guarantee that Chevron's trademarks would not be lost. The opportunities for consumer deception would still be too great.

Unfortunately, liability for the sale of defective gasoline would become a monumental problem. Under the present system, Chevron lessee dealers are selling Chevron gasoline from Chevron facilities and we stand firmly behind our products. With other products being sold from our facilities and commingling taking place with increasing frequency, there could be substantial liability for defective gasoline. The non-Chevron gasoline might contain too much alcohol, too much lead or be contaminated. As mentioned earlier, if the customer has a problem, he or she will believe Chevron was responsible. Indeed, if the transaction is one for cash, no one could be certain whether Chevron gasoline or the non-Chevron gasoline was purchased. In any case of doubt, you can be sure that if Chevron's sign is above the station, Chevron will be considered liable.

Chevron dealers recognize -- with this open supply hodgepodge under a Chevron flag -- that any loyalty they have built up with customers would be undermined. Dealers have also told us they recognize that to expect Chevron to invest hundreds of thousands of dollars in facilities at a service station and be told that Chevron could only expect to sell 70% of the volume is economically unrealistic.

Dealers recognize the sizeable investment and maintenance costs required by today's service stations and know their station's economic justification as a Chevron branded station hinges on the volume of Chevron gasoline going through the location. Consequently, most Chevron dealers see the threat to the branded network that open supply represents.

There are some additional problems to be considered:

- o It can be anticipated that many different kinds of gasoline will be used in the storage tank the dealer uses for non-Chevron gasoline. Who will have the responsibility for maintaining this tank properly?
- o If Chevron gasoline is used from time to time in this tank, who will have the responsibility to the regulatory agencies for grade and octane postings?
- o Who will be responsible for any environmental problems that stem from non-Chevron gasoline?
- o Who is going to pay the third party land owner whose rental is based on the station's gallonage. Chevron? The dealer? Some other supplier? Is some division to be made? If so, on what basis?

- o What system can possibly be devised for establishing the percentage of non-Chevron gasoline sold without requiring the dealer to furnish his books to Chevron on a continuing basis?

The proponents of this bill say they do not wish to disrupt brand-name marketing. Yet, their bill does not even mention any of the problems just described.

Because of all these problems, refiners would be forced to re-examine whether their extensive investments in brand-name marketing made any sense. Chevron believes many refiners would conclude branded marketing is just not worth it.

To appreciate the impact this bill would have, it is important to understand Chevron's relationship with its Chevron lessee dealers.

Chevron provides the dealer with a location on a turnkey basis. The basic investment is ours. The dealer pays no franchise fee. A Chevron dealer obtains products which Chevron stands behind. The dealer commits to meeting the demand for all grades of Chevron gasolines.

If the dealer becomes dissatisfied with the arrangement, he can walk away from it at any time for any reason or no reason. It's his choice. On the other hand, under the Petroleum Marketing Practices Act, a dealer is virtually assured of being at a station location as long as Chevron is there.

The problems we have discussed will not just cause the erosion of branded marketing but eliminate the brand entirely. This is because no one can afford to support a brand for someone else's sales.

The proponents of H.R. 3824 have brought you a bill that has two provisions. They are as transparent as they can be. Their proposal to you is:

- o Chevron continues with the land and facilities investment, maintains the Chevron brand and services, carries all the product and facilities responsibility, and
- o Leases this property to Chevron dealers for as long as the dealers want.

But, there's a catch. Any economic justification Chevron has for continuing these activities should be discounted 30% because Chevron dealers would be free to convert Chevron's tanks and pumps to other supplier's products 30% of the time.

Then, for fear Chevron, in an effort to protect its investments, might consider marketing through these facilities on a direct basis, this bill would prohibit Chevron from doing so.

So, now, this special interest legislation would result in confiscating our investments at dealer locations and require that we convert our existing Company locations to dealer operation so they, too, can be confiscated.

And, while Chevron would be meat-axed as just described, jobbers, farm cooperatives and many mass merchandisers and private brand retailers are excluded from the bill.

The bill would also sanction low interest Federal loans for dealers, under the more relaxed credit standards of the Small Business Act, to help them buy up service station properties put on the market. Under the bill, the Government would be empowered to make service station loans without the limitations that otherwise apply:

- o A dealer could obtain a small business loan even though he could obtain credit elsewhere.
- o The loan could be much longer than 25 years.
- o There would be no limit on the amount of money a dealer could borrow.

Following the termination of DOE regulations, gasoline has been sold in a free market and Chevron believes whatever rules are adopted should apply equally to everyone.

We trust you can see the unfairness of this bill and why Chevron firmly believes that the ramifications of the bill's provisions, as they apply to dealers, consumers and refiners, are simply not understood.

We urge you to reject it.

APPENDIX M.—PREPARED STATEMENT OF TEXACO

The following comments concern H.R. 3824, the "Motor Fuel Sales Competition Improvement Act of 1985." Texaco appreciates this opportunity to present its views on the subject.

Issue: Legislation that would prohibit large, integrated refiners from operating gasoline retail facilities and limit the branded supply of motor fuel is again being considered in Congress as H.R. 3824. These legislative concepts, commonly known as "retail divorcement" and "open supply" have been debated by Congress in the past and wisely rejected.

Summary of Texaco Position: The proposed addition to the Clayton Act of a new Section 3A is unnecessary. The proposal makes it unlawful for any producer or refiner, directly or indirectly, to require any retail motor fuel dealer to purchase more than 70 percent of his monthly retail sales from that producer or refiner or to prohibit the use or conversion of storage tanks and dispensers by the dealer to sell gasoline other than that of his regular supplier.

The antitrust laws already prohibit a major oil company from imposing on its dealers the obligation to purchase all of their

gasoline requirements from it (Standard Oil Co. of California v. United States, 337 U.S. 293 (1949)).

That the overwhelming majority of service stations in this country offer only a single brand of gasoline for resale to the public is not the result of defiance by the major oil companies of that decision of the Supreme Court. Rather, it is the consequence of the service station dealer's free choice arrived at because it is, in all but a few cases, uneconomic for a station to carry more than one brand of motor fuel at a time. There are thousands of dealer-owned and operated stations and thousands of stations served by distributors. Many of these distributors simultaneously carry two or more brands of gasoline for resale to their service station customers. Very few of these dealer-owned or distributor served stations -- stations certainly free of any coercion by the major oil companies -- choose to offer the public two or more brands of gasoline. There are also many independent dealers who own and operate two or more stations and who offer one brand of gasoline at one station and a second brand at another location. Few of these dealers choose to offer two brands at the same station at the same time.

The virtual universal practice followed in the retailing of gasoline demonstrates that it is uneconomic for a dealer to carry more than one brand of gasoline at a time. The Supreme Court recognized this possibility in Standard Oil, above, and held that

"if in fact it is economically desirable for service stations to confine themselves to the sale of the petroleum products of a single supplier, they will continue to do so though not bound by contract, and if in fact it is important to retail dealers to assure the supply of their requirements by obtaining the commitment of a single supplier to fulfill them, competition for their patronage should enable them to insist upon such an arrangement without binding them to refrain from looking elsewhere" (337 U.S. at 313-14).

Section 3A of the proposed bill is directed at a non-existent problem which it attempts to resolve by prohibiting a practice long ago condemned by the Supreme Court. In short, there is no need for this bill.

Opposition's Position: Some wholesalers, retailers and members of the Congress believe that "retail divorcement" and "open supply" would solve the problems of the retail marketplace by guaranteeing healthy and vigorous competition among retailers, distributors and refiners in the petroleum industry.

Proponents of this legislation believe branded retailers are being forced out of business by major refiners who allegedly sell motor fuel to their own direct operated retail facilities at prices below that which they sell to their branded dealers. This allegedly allows the major company to retail the motor fuel at a

lower price than the branded retailer. These proponents contend that the major, integrated companies utilize upstream profits from crude oil to subsidize losses at the retail level, with the intent of recovering the losses when the competing, branded retailer has been forced out of business.

Advocates of divorcement cite statistics which show that a large number of retail facilities have closed during the past five to ten years. They say that the majority of these closings were caused by the "unfair competition" from the majors' salaried outlets or other unfair pressures exerted by major oil companies. Proponents also cite statistics showing a large percentage growth in the number of salary operated retail facilities of major refiners.

Texaco's Answer: Texaco has been marketing petroleum products since 1902. Texaco's growth since its inception can be credited in large part to its retailers and wholesalers.

Texaco must oppose H.R. 3824 for several, fundamental reasons.

- o H.R. 3824 is an attempt to restructure the retail petroleum market that would, in fact, deny an entire segment of industry its right to operate its business in the most efficient and competitive manner.

- o This bill, by prohibiting large, integrated refiners from directly operating retail facilities, inhibits their ability to introduce innovative, beneficial marketing techniques and would therefore discourage dealers' entry into new markets.
- o Open supply legislation is not necessary. Retailers already have the right to purchase motor fuel from other sources.
- o H.R. 3824 is fraught with provisions that could cause innumerable problems for consumers as well as wholesalers and retailers. Consumers would no longer be able to determine, at a glance at trademark signs, what quality products are available. The quality of products could easily fall to the minimum standard as "open supply" removed the incentives that both insure the high quality of branded products and promote research to develop more efficient fuels. This bill would encourage the use of "bait and switch" deceptive practices that Congress and the FTC have worked for years to eliminate. A retailer could freely contaminate, commingle, and misbrand motor fuel and pass it off the motorist as product manufactured a major oil company. The so-called "notice" in Section

2(c) of S. 3824 is nothing more than a codification of "caveat emptor."

- o This bill will not solve the perceived problems of the retailers. There is no doubt that the number of all types of gasoline retail facilities, both branded and unbranded, has been significantly reduced over recent years, but proponents of this legislation have confused consumer preference with unfair competition. The belief that legislation is necessary to prevent the major oil companies from diverting gasoline away from retailers by building up volumes at their directly operated facilities is misdirected. There is no evidence that retailers have lost any volume to retail facilities operated by the major oil companies.

- o H.R. 3824 is unnecessary because retailers are already protected from anti-competitive behavior of suppliers by existing federal statutes; namely the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act, and the Petroleum Marketing Practices Act. In fact, Texaco prices are based primarily on competitive factors. Retail prices established at all company operated facilities are fair, legal and reflect the market conditions. Contrary to various unfounded allegations, Texaco does not discriminate against the retailers in its pricing policy.

- o History shows that enactment of H.R. 3824 is ill-advised. A few states have already passed divorce legislation. An analysis of gasoline prices in the first state to do so, Maryland, shows that when the tax differentials are recognized, Maryland's gasoline prices are higher than those in surrounding areas.

The gasoline market has always, except for brief periods during price and allocation controls, been highly competitive but profitable for those who could adapt to changing conditions. The combination of market forces at work today has placed considerable pressure on the traditional methods of marketing gasoline. Businesses, small and large, oil related and non-oil related, have failed in unprecedented numbers during recent years. Many of these businesses were considered to be "well managed," while others, no doubt, were casualties of their own inefficiencies or mismanagement. In the petroleum industry, it was not the refiner who decided the fate of the retailers who failed or those who now find themselves vulnerable, but a combination of the consumer expressing his preference, decreasing gasoline demand and some retailers' inability to cope with today's economics and adapt to a changing marketplace.

APPENDIX N.—PREPARED STATEMENT OF PHILLIPS 66 CO.

PHILLIPS 66 COMPANY

BARTLESVILLE, OKLAHOMA 74004
918-477-4121

April 16, 1986

J. J. BENDERMAN
Vice President
Marketing Division

The Honorable Nicholas Marvoulos
House General Oversight and
The Economy Subcommittee
House Small Business Committee
Rayburn House Office Building, Room B-363
Independence & South Capitol St., S.W.
Washington, DC 20515

Dear Mr. Chairman:

Phillips 66 Company is taking this opportunity to express its opposition to H.R. 3824 (Bedell, D-IA), the Motor Fuel Sales Competition Improvement Act of 1985. It is understood that the Subcommittee will discuss this proposed legislation at a public hearing on April 17, 1986; therefore, it is requested that these comments be entered into the record for that proceeding.

Although Phillips markets most of its products through approximately 1,700 independent marketers, Phillips remains opposed to retail divorcement legislation at any level. H.R. 3824 should not be passed because it is anticompetitive and unnecessary. It promotes inefficient operations and removes one layer of competition at the expense of the consumer. The free market should be permitted to dictate the mix of independent and direct operations.

Phillips uses a limited number of retail operations as a model for its independent marketers. These retail operations test and evaluate new concepts which benefit both the marketer and the consumer. Phillips limited direct dealings with the consumer through its own marketing outlets also allow the opportunity to address the consumers' desires and more effectively meet their needs. The enactment of a bill of this type would eliminate an avenue by which Phillips attempts to better serve both the consumer and the independent marketer.

April 15, 1986

Retail marketing divorcement is special interest, protectionist legislation aimed at eliminating an entire class of competition and would, if enacted, force consumers to pay higher prices for the products they require. Research conducted by Purdue University, after the state of Maryland enacted divorcement legislation, found that the price of motor fuel rose after divorcement. This increase in price cost Maryland consumers \$15 million per year in higher gasoline costs. In addition, 11% of the divorced stations closed their doors and ceased operations. Legislation which seeks to insulate certain businesses from the demands of the current competitive environment is not needed. Government intervention will ultimately cause the consumer to suffer.

I would welcome the opportunity for Phillips personnel to meet with members of the Subcommittee staff to discuss the points in this letter. Our people will be available at your convenience.

Very truly yours,

A handwritten signature in dark ink, appearing to read "P. H. Bowerman". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

CLB:csn010

APPENDIX O.—PREPARED STATEMENT OF EDWARD P. CAMPBELL, VICE PRESIDENT, RETAIL SALES, STANDARD OIL CO., AND CLARIFICATION LETTER FROM PETE RILEY, REGION MANAGER, RETAIL, GULF PRODUCTS DIVISION, SUBSIDIARY OF STANDARD OIL

This is the statement of The Standard Oil Company, submitted by Edward P. Campbell, Vice President, Retail Sales for the record concerning H.R. 3824, entitled "Motor Fuel Sales Competition Improvement Act of 1985."

Essentially, H.R. 3824 contains the same key provisions as S. 326, S. 2798, S. 40, and S. 1140 on which hearings were held during 1980, 1981, 1984 and 1985. The Standard Oil Company submitted testimony for the record at those hearings. This statement reaffirms opposition to H.R. 3824.

As introduced, H.R. 3824 would prohibit all major refiners from operating retail gasoline outlets with company personnel. The bill, however, would place no restrictions on "small" and "independent" refiners regarding operation of company outlets. Further, it would permit "open supply" with multiple branding at potentially all service stations.

The Standard Oil Company is opposed to H.R. 3824. It is anti-consumer, special interest legislation designed to remove a legitimate competitive force from the marketplace at a significant cost to the consumer.

Before discussing provisions of the bill, let me briefly review the nature of our operations. With the acquisition of the Gulf marketing and refining properties in eight southeastern states from Chevron in February, 1985, we market through over 8,000 outlets in the eastern United States. In addition, we market nationwide through the Truckstops of America chain acquired from Ryder Trucking in 1984. Of these 8,000 outlets, less than 1,400 (17%) are

company-operated, about 1,400 (17%) are dealer-operated and over 5,000 (66%) are supplied by branded jobbers. Over 11,000 employees would be jeopardized if divorcement as proposed were to be enacted.

Since The Standard Oil Company had essentially no operations in the Southeast prior to the acquisition of the Gulf properties, there has been no change in market concentration due to our acquisition. This is worthy of note because of allegations, by the Service Station Dealers of America, of high market concentration in certain states due to mergers and predatory company operations. They allege that "in states such as West Virginia, Vermont, Delaware, and Ohio, the top four oil companies control over 80% of the gasoline market. In states such as Kentucky, Arizona, Wyoming, and Maryland, the dominant oil companies have market shares ranging from 55 to 64 percent." The facts are that based on full-year 1984 state taxable gasoline data published by Lundberg Surveys, Inc., none of these states have a combined market share for the four top marketers of even 60%.

The combined market share of the four leading sellers was for many years the most usual measure of competition. Since the Antitrust Division of the U.S. Department of Justice issued its Merger Guidelines in 1982, it has become customary to measure concentration using the Herfindahl Index, or HHI. The HHI is the sum of squares for the respective market shares of all the sellers. Using Lundberg market share data from 1984, the HHI for our home state of Ohio is about 1150, indicative of rather low concentration on a scale ranging from 0 for infinite competition to 10,000 for a complete monopoly. For the other states cited above, it ranges from 550 to 1100.

Retail divorcement is a concept that gained acceptance in only a handful of states and is now rapidly waning. A few retail divorcement laws were passed in the mid 1970's in response to the shortage of products caused by the initial Arab oil embargo. Dealers at that time felt that they were not getting a fair allocation of product in comparison to the few company operated stations, and therefore sought to have the company operated stations eliminated. The dealers also contend that refiners engaged in predatory pricing and were subsidizing company operated stations with profit from other operations. A number of studies by federal government agencies showed that these allegations were not true.

The Office of Competition of the U.S. Department of Energy studied competition in the petroleum industry in great depth, as required by Congress, when it passed the Petroleum Marketing Practices Act. Their most recent draft study, Deregulated Gasoline Marketing, published in 1984 concludes that:

"The vigorous competition occurring in the marketplace since decontrol is caused by underlying structural changes in costs, consumer demand and consumer preferences. The market changes are not the result of anticompetitive activity, but the result of the competitive process itself forcing adaptation to these underlying structural changes. The many legislative proposals now circulating at both the federal and state level are unwarranted efforts to block or undo the effects of these market forces. At best they are useless. At worst they are expensive counter-productive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help while they harm the competitive process, competitors and consumers."

Since the initial small flurry of retail divorcement laws, many similar bills have been rejected year-after-year at both the state and national level. The most current action regarding divorcement took place May, 1985,

when both the Florida House of Representatives and the Florida Senate voted unanimously to repeal a Florida retail divorcement law which was to go into effect in 1985 after ten years of litigation.

The provision of H.R. 3824 that would allow a service station dealer to purchase up to 30 percent of his gasoline from any source is called "Open Supply" in the trade. Open supply as proposed in H.R. 3824 would cause severe consumer confusion, unfair competition and lead to the demise of branded service station marketing, to the detriment of lessee dealers.

The brand of gasoline is still very important to a large segment of the motoring public. Over the years, customers have come to rely on the brand to signify an expected level of product quality, service, and other benefits, such as credit card acceptance. This consumer brand loyalty did not develop by chance; it was the result of planned investment in first-class service stations at high traffic locations, refinery units, product development, quality control, and significant working capital.

Gasoline brand loyalty is very similar to the loyalty toward many consumer products, such as Maxwell House coffee or Tide laundry detergent. Customers of these brands have developed an expectation of quality and do not expect any surprises when they open a can of coffee or a box of detergent. The same is true of those who patronize branded service stations. Although open supply would require the station dispensers to be appropriately marked, motorists would still be attracted to the station by the brand identification on the station building and on the I.D. signs. Having been drawn into the station,

the customer would feel deceived by the offering of a product of another brand or no brand at all. His/her confidence in that station and others carrying the same brand would be severely shaken.

Open supply would allow a competitor to take unfair advantage of an established company's trademark/brand loyalty. A competitor could dump product into a station and draw upon the goodwill and investments of the original brand. Overall, the environment created by open supply would make it much less attractive for refiners to make investments in branded service stations. Market competition would decline as more branded competitors withdrew because of this condition.

Additionally, open supply would produce chaos in assigning responsibility for compliance with Federal and State laws concerning octane levels, lead content, and leaking underground tanks. With more than one supplier allowed to deliver product into a service station tank, it will not be possible to determine responsibility for "off-spec" product if actual octane is below that posted in accordance with federal regulations, or if leaded product contaminates unleaded product.

At hearings on S. 1140, virtually the same bill as H.R. 3824, the Antitrust Division of the Department of Justice concluded before the Senate Committee on the Judiciary in October, 1985, that:

"This provision (Open Supply) is intended to increase a dealer's flexibility with respect to securing gasoline supplies"...
"without violating existing supplier-dealer contracts. The antitrust laws, however, already prohibit non-price contractual restraints such as exclusive dealing arrangements or requirements contracts that are determined to be anticompetitive under the rule of reason approach."

At the same hearings last October, the Federal Trade Commission concluded that:

"If the purpose of S. 1140 is to protect gasoline franchisers of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers, the bill is unnecessary. There is simply no credible evidence that such practices are either occurring or would successfully be used to harm gasoline dealers."

The Standard Oil Company agrees with the Department of Justice and the Federal Trade Commission on opposition of retail divorcement and open supply legislation.

Petroleum regulations were lifted five years ago. Contrary to the dire predictions from many sources, decontrolled gasoline prices have decreased overall rather than increased. In January 1981, just prior to decontrol, the U.S. city average gasoline price was \$1.27 per gallon according to the Bureau of Labor Statistics. In January 1986, just prior to falling crude oil prices, the U.S. city average gasoline price was \$1.19 per gallon, and included 5¢ more Federal and 2¢ more state tax than in 1981. Legislation such as H.R. 3824 runs counter to the movement to lift government controls from the marketplace allowing consumers to benefit from free market competition.

Honorable Nicholas Mavroules, Chairman
General Oversight and the Economy Subcommittee
B363, Rayburn House Office Building
Washington, DC 20515

I would like to take this opportunity to clarify for you and other members of your Subcommittee certain allegations concerning the Gulf Products Division of BP Oil, Inc., the subsidiary of The Standard Oil Company operating in the Southeast.

Standard Oil purchased the marketing assets of the Gulf Oil Corporation from its parent, the Chevron Corporation, in February, 1985. This divestment was necessary for Chevron to comply with requirements set forth by the Federal Trade Commission as a condition for the Chevron-Gulf merger to proceed. The FTC approved this sale which also had the strong backing of virtually all the Gulf wholesalers and retailers, as it insured a strong viable competitor who would continue to supply quality brand name products, services, credit card and advertising essential to their respective businesses.

We have successfully made the transition under the Gulf brand here in the Southeast while continuing the marketing philosophy which includes branded company operated outlets, lessee dealers and branded wholesalers or jobbers. That policy has continued and will continue in the future despite allegations to the contrary made before you by Mr. Jack Houston of the Georgia Association of Petroleum Retailers on April 17, 1986.

At that time, Mr. Houston quoted excerpts from a taped conversation between Standard Oil employees and a labor supply contractor concerning his contract with our company. That conversation, taped without prior knowledge, and released without any authorization, has not been available for verification or review as to accuracy nor how the excerpts were extracted from context as used by Mr. Houston.

However, I wish to state for you and your Subcommittee our policies, which are backed by our record here in Georgia.

Honorable Nicholas Mavroules
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June 9, 1986

First, the Gulf Products Division has no intention of taking over all the branded locations in the Southeast. In Georgia, there were over 3500 branded Gulf outlets when our company entered the Southeast market in February, 1985. That number is substantially the same today, sixteen months later. Of these outlets, we directly leased 115 outlets and 107 of those remain with dealers today. The decline has been attributable to condemnations by local governments, dealers switching suppliers, and expiration of underlying ground leases. In short, we have an excellent relationship with our lessee dealers and jobbers throughout Georgia and the seven other southeastern states acquired by Standard Oil. We are committed to the method of operation.

Second, Gulf Products Division does not have labor contractor dealers referred to in the testimony. We do have labor supply arrangements, where contractors operate some of our locations for a fee with their personnel. As these contracts come up for renewal, we review each one individually - there is no blanket policy to renew or terminate. In Georgia, again referred to by Mr. Houston, 24 of 31 labor contractors still have such arrangements which we could have cancelled by now, if it was our intention.

It should be emphasized that these individuals are not dealers with a franchise agreement. They contract with us to supply certain labor and managerial services for which they are paid. We believe these contracts are no different from agreements reached to provide other services in our industry, such as maintenance, cleaning, and transporting. If prudent business decisions indicate another contractor or method of operation is more efficient, we feel justified in altering the previous method of operation. Again, this is not a dealer franchise but a service supply contract.

Third, we do not believe that such contractors are covered by the Petroleum Marketing Practices Act. Such an interpretation, as attributed in the testimony before you, dramatically extends the concept of that law. That interpretation presented before you would make it virtually impossible for us to terminate or non-renew any contract for any service arrangement. To deny this flexibility would severely cripple the ability of any business to react to changing marketplace conditions.

Honorable Nicholas Mavroules
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June 9, 1986

Fourth, I would like to point out that we are still negotiating with the labor supply contractor in question, Mr. Sherwood Daniel, as to the final disposition of this matter. Mr. Daniel has been offered a new labor supply contract to consider or as an alternative, complete reimbursement for his investment in equipment and inventory. It has been, is, and will continue to be, our policy to fully comply with existing laws and to try to reach amicable settlements whenever a change in the method of operation is contemplated.

I hope that I have been able to clarify our position with you. If you or other members of your Subcommittee or staff have any other questions concerning our policies or operations, I would be happy to provide you with the appropriate information.

Sincerely,


Pete Riley
Region Manager - Retail

PR/dp

APPENDIX P.—AMPLIFICATION OF RESPONSE TO MR. BEDELL'S
QUESTIONS FROM J.L. FRANK, PRESIDENT, MARATHON PETROLEUM CO.

J. L. Frank
President



**Marathon
Petroleum Company**

Findlay, Ohio 45840
Telephone 419/422-2121
Telex 242421

May 1, 1986

The Honorable Nicholas Mavroules, Chairman
Small Business Subcommittee on General Oversight
and the Economy
B-363 Rayburn House Office Bldg.
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Mavroules:

I appreciated the opportunity to testify at the Subcommittee's hearing on H.R. 3824. The dramatic impact which the divorce provisions of H.R. 3824 would have on the retail gasoline marketplace certainly merit the Subcommittee's careful consideration and a full understanding of the issues involved.

With this in mind, I have briefly reviewed a preliminary transcript of the hearing, paying particular attention to the question-and-answer session which followed the panel of integrated refiner-suppliers. The preliminary transcript reveals some misunderstanding, or perhaps miscommunication, between Rep. Bedell and myself as I attempted to answer his question relating to gasoline pricing. This led to further queries and responses which, regrettably, may have confused the issue further.

Therefore, I am enclosing an amplification of my response to Rep. Bedell's questions on pricing at the end of the hearing. I hope that it will serve to clear up any misunderstanding which may have resulted from our discussion. I respectfully request that the revised response be inserted into the record.

Your assistance in this matter is greatly appreciated.

Sincerely,

JLF:sdg
Attachment
cc: Ms. Cathleen Garman

UNITED STATES HOUSE OF REPRESENTATIVES
 COMMITTEE ON SMALL BUSINESS
 SUBCOMMITTEE ON GENERAL OVERSIGHT AND THE ECONOMY
 TESTIMONY ON H.R. 3824
 April 17, 1986

Inquiry by Rep. Bedell:

How does the price at which you sell to dealers compare with the price at which you sell gasoline at your other stores?

Response of J. L. Frank (Marathon Petroleum Company):

There is no fixed differential between the price at which we sell to our dealers, known as the dealer tankwagon or DTW price, and the retail or "street" prices of our direct-marketing subsidiary. Each of these prices tends to be responsive to local competitive conditions. The differentials between our DTW and subsidiary retail prices can and do vary constantly in different locals and among the various grades of gasoline. However, in an attempt to answer your question, I would estimate that under "normal" conditions, dealer tankwagon prices average 2 to 3¢ per gallon less than subsidiary retail prices. Let me emphasize again, however, that there is no fixed differential between DTW and retail prices.

In order to compare dealer prices to those of our direct-marketing subsidiary, one must understand that the ultimate differential reflects the combined effect of at least four different pricing decisions. They include:

1. Marathon's unbranded wholesale dock price
 The wholesale dock price is that price at which Marathon sells to its unbranded wholesale customers at the terminal rack. The customer is responsible for transportation to the retail outlet. No corporate services are provided to the customer subsequent to the sales transaction. The wholesale dock price is influenced primarily by rack prices of competing unbranded wholesalers. Marathon's direct-marketing subsidiary purchases product from the parent company at the wholesale dock price -- the same price as any other unbranded wholesale customer.
2. Subsidiary retail price
 Our direct-marketing subsidiary sets its retail prices based upon local competition, its acquisition costs and a desired profit margin. Obviously, these various factors will frequently conflict. Based on its acquisition costs, our subsidiary may not be able to obtain the desired gross profit margin and still meet the prices of its competitors. The pricing philosophy of our subsidiary is to attempt to sell a large volume of gasoline at a relatively small profit margin. To be profitable, it is essential to limit overhead. This is done by operating self-serve, "gas-and-go" units, which do not provide ancillary services.

3. Dealer tankwagon (DTW) price

Marathon's sales price to its dealers is based primarily upon the competing prices of other refiner-suppliers to their branded dealers. The DTW is determined so as to allow Marathon-brand dealers to compete effectively with other full service dealers who market under a refiner's trademark. It should be noted that the dealer tankwagon price is a delivered price which includes transportation to the service station. Also included in DTW are the costs of the proprietary performance additive package added to Marathon-brand gasoline, the use of Marathon's credit card, Marathon-sponsored advertising and promotions, dealer training and related services. Generally, Marathon's dealer tankwagon price tends to be 5 to 7¢ per gallon greater than our unbranded wholesale dock price. But, here too, differentials can and do vary substantially.

4. Dealer retail price

Each and every Marathon dealer has sole responsibility for establishing his/her own retail prices. Marathon has no say in this pricing decision. By and large, branded dealers do not attempt to be "low price" competitors, due in part to their greater overhead costs. Branded dealers generally chose to sell fewer gallons at a higher margin, and attract customers and supplement their incomes by offering services not available at self-serve outlets. These would include attendant services (wash the windshield, check the oil, etc.), the use of a credit card, automotive repairs, and so on. Many dealers, in an effort to broaden their appeal to potential customers, operate so-called "split-island" operations, where both self-serve and full-serve pump islands are available. As a general observation, branded dealers tend to price leaded regular gasoline, the so-called "fighting grade," at roughly 2¢ per gallon over the price of unbranded self-serve competitors. Once again, however, this differential is not fixed and can vary over place and time.

The gasoline marketplace is both diverse and complex, with many different market segments. Thus, one must be extremely careful when comparing gasoline prices -- especially if the comparison is made at two different points in the distribution chain, or across market segments.

